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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Eighth periodic reports of States parties due in 1997

Addendum

# Portugal */

[9 March 1998]

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*/ This report combines in one document the fifth, sixth, seventh and eighth periodic reports of Portugal, which were scheduled to be submitted on 23 September 1991, 1993, 1995 and 1997 respectively. For the third and fourth periodic reports, combined in one document, and the summary records of the Committee meetings at which those reports were considered, see documents CERD/C/179/Add.2 and CERD/C/SR.895 and 896.

The information submitted by Portugal in accordance with the unified guidelines for the first part of reports by States parties is contained in the basic document (HRI/CORE/1/Add.20).

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*/ These annexes can be consulted in the archives of the Secretariat.

## Introduction

1. This report deals with the application in internal law of the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination, which was adopted by the United Nations General Assembly in resolution 2106 A (XX) of 21 December 1965 and came into force on 4 January 1969. This Convention was approved, for the purposes of accession thereto, by Act 7/82 of the Assembly of the Portuguese Republic, dated 29 April 1982, and came into force for Portugal on 23 September 1982.

2. This report constitutes the consolidated text of the fifth, sixth, seventh and eighth reports by Portugal on the application of the Convention, and covers the period 1991 to 1998. The fact that this is consolidated text of four periodic reports that should have been submitted in 1991, 1993, 1995 and 1997 and that there was dialogue with the Committee at the time the previous reports (CERD/C/179/Add.2) were submitted naturally places limits on its content.

3. It thus includes current information on the internal application of the Convention, taking account of the new developments that have taken place. It must be stressed in particular that the Constitution has undergone a fourth revision (Constitution Act 1/97) which has recently been approved (September 1997); it is to the new text of these provisions that reference will be made.

4. In accordance with the guidelines (CERD/C/70/Rev.2) regarding the form and content of the reports to be submitted by States parties under article 9, paragraph 1, of the Convention, Portugal is requested to provide information on the demographic composition of its population. This has been done, but without any reference to the racial composition of the population, in line with the recommendations of the United Nations suggesting that inclusion of characteristics relating to "race" should be optional.

5. Furthermore, the Portuguese Constitution establishes the principle of non-discrimination, pursuant to which no one may enjoy a privilege or benefit, be deprived of a right or exempted from an obligation on account of his race. However, in view of the interest shown by the Committee, a fairly detailed analysis of the demographic composition of the Portuguese population is given in the first part of the report. This part will also deal with the general institutional framework, the atmosphere regarding racism and intolerance in Portugal and the participation of Portugal in various international meetings concerned with racial discrimination, racism and xenophobia. The second part of the report is devoted to comments on the application of articles 2 to 7 of the Convention.

## Part I

## GENERAL CONSIDERATIONS

### I. DEMOGRAPHIC COMPOSITION OF THE POPULATION

#### A. Foreigners resident in Portugal on 31 December 1996

6. The source of the information that follows is the annual report of the Aliens and Frontiers Department for 1996.

7. The total number of foreigners resident in Portugal on 31 December 1996 was 172 912, which amounts to an increase of 2.7% as compared with the figure for 1995. This is the lowest percentage increase between 1986 and 1996.

8. The two largest population groups originate from the European Union, with 43 732 (25.3%) residents, and from the community of Portuguese-speaking countries, with 97 196 (56.2%) residents.

9. More than half of these foreigners are resident in the Lisbon district, 95 348 (55.1%), followed by the districts of Faro, 21 660 (12.5%), Setubal, 15 985 ( 9.2%), Porto, 10 690 (6.1%) and Aveiro with 6 903 (4.0%). The lowest concentration of foreign residents is in the district of Portalegre (479 or 0.3%) and Bragança (259 or 0.1%).

10. African communities represent about 47% (81 176) of the overall number of foreign residents, while the European Union accounts for 25.3% (43 732), Central and South America 14.9% (25 733). The Asian continent accounts for the smallest share of foreign residents with about 4.1% (7 140).

11. Of the nationalities represented, Cape Verde comes first with a total of 39 546 (22.9%), with a majority of men, 23 908 (60.5%), and only 15 638 (39.5%) women. The Brazilian community comes second with 20 082 residents, 10 884 men (54.2%) and 9 198 women (45.8%).

12. With regard to their distribution by sex, the majority of foreign residents are male (100 987, or 58.4%), while 71 925 are female (41.6%).

13. 86 810 (53.5%) of these foreign residents are active while 75 399 (46.5%) are not active. Of the active population, 19.3% (16 772) are employers or self-employed, while 80.7% (70 038) work for another employer. Of the non-active foreign residents, students, with 44.3% (33 375) and housewives, with 44.0% (33 190) account for almost the entirety of this group. There are 5 450 foreign residents who are retired (7.2%).

14. Analysis of movements recorded in 1996 shows that 7 767 foreign residents entered Portugal: 4 283 (55.1%) were men and 3 484 (44.9%) were women. These persons mostly cam from countries of the European Union, with 2 717 (35.0%), and Africa, with 2 649 (34.1%). Cape Verde with 1 068 persons and Brazil with 829 foreign residents were the countries that contributed most to this flow. The age structure of the new foreign residents shows that the age group 25/29 years was the most representative with 1 356 (17.6%) persons.

15. With regard to cessation of residence (departures), 3 171 foreigners left the country: 1 737 males (54.8%) and 1 434 females (45.2%). The most nationalities most represented were Brazilians with 648 (20.4%) of departures and Venezuelans with 503 (15.9%). The age group experiencing the most movement was the group aged 20/24 years with 617 (19.5%) cessations of residence.

## B. Gypsies

16. Without making reference to race - which is not permitted under the Portuguese legal system as we have emphasized above and which is deemed by the United Nations an optional criterion - it must be pointed out that there are about 40 000 Portuguese citizens who may be considered to be Gypsies and who must be offered - like other Portuguese citizens - conditions for harmonious insertion into Portuguese society. This has led the Government, by resolution 157/96 of the Council of Ministers, published in the Official Journal, series 1 - B, of 16 October 1996, to set up a working group for the equality and insertion of the Gypsies. This working group completed its work in January 1997 and therefore ceased to exist, being replaced by a group to follow up the measures proposed in the report submitted by it. The Gypsies have been in Portugal since the XVth century. They have been Portuguese citizens since the Constitution of 1822 and the Constitutional Charter of 1826 which eliminated inequalities based on race and recognized the Portuguese citizenship of persons born on Portuguese territory.

## C. Foreigners resident in Portugal on 31 August 1997

17. These data also come from the Aliens and Frontiers Department. They are more recent and give a more accurate idea of the number of foreigners resident in Portugal. On 31 August 1997, the resident foreign population numbered 174 638 persons, of whom 49 014 originated from Europe and 45 360 from the European Union. In the latter group, Spaniards (9 683), Germans (8 213) and French citizens (5 326) were the most numerous.

18. The largest group of foreign residents comes from Africa (81 472), with 16 289 from Angola, 39 655 from Cape Verde, 12 743 from Guinea Bissau, 4 413 from Mozambique and 4 278 from Sao Tome and Principe. Thirty-six thousand one hundred and ninety-seven originated from the Americas, with 20 045 Brazilians. Asia was the smallest group, with only 7 190 persons.

Table 1

Foreign population resident in Portugal on 31 August 1997
(by country of origin)

| Country of origin | Total |
|---|---|
| Europe | 49 014 |
| European Union | 45 360 |
| Germany | 8 213 |
| Austria | 416 |
| Belgium | 1 647 |
| Denmark | 667 |
| Spain | 9 683 |
| Finland | 426 |
| France | 5 326 |
| Greece | 93 |
| Ireland | 348 |
| Italy | 2 612 |
| Luxembourg | 59 |
| Netherlands | 3 064 |
| United Kingdom | 12 189 |
| Sweden | 1 067 |
| Other countries of Europe | 3 654 |
| Albania | 3 |
| Armenia | 9 |
| Belarus | 9 |
| Bosnia-Herzegovina | 88 |
| Bulgaria | 308 |
| Cyprus | 2 |
| Croatia | 81 |
| Estonia | 1 |
| Ex-Yugoslav Republic of Macedonia | 1 |
| Ex-Czechoslovakia | 69 |
| Ex-Yugoslavia | 155 |
| Ex-USSR | 308 |
| Hungary | 84 |
| Iceland | 34 |
| Liechtenstein | 4 |
| Lithuania | 10 |
| Malta | 5 |
| Monaco | 2 |
| Norway | 400 |
| Poland | 187 |
| Czech Republic | 19 |
| Romania | |
| Russia | 342 |
| Slovakia | 8 |
| Slovenia | 4 |
| Switzerland | 1 171 |

| | |
|---|---|
| Turkey | 80 |
| Ukraine | 78 |
| Yugoslavia | 53 |
| | |
| Africa | 81 472 |
| | |
| South Africa | 1 730 |
| Algeria | 72 |
| Angola | 16 289 |
| Benin | 4 |
| Botswana | 3 |
| Burundi | 1 |
| Burkina Faso | 2 |
| Cameroon | 12 |
| Cape Verde | 39 655 |
| Congo | 3 |
| Côte d'Ivoire | 78 |
| Djibouti | 1 |
| Egypt | 49 |
| Ethiopia | 5 |
| Gambia | 3 |
| Ghana | 19 |
| Guinea Bissau | 12 743 |
| Guinea | 198 |
| Libyan Arab Jamahiriya | 36 |
| Kenya | 286 |
| Lesotho | 4 |
| Liberia | 36 |
| Madagascar | 4 |
| Malawi | 22 |
| Mali | 57 |
| Morocco | 288 |
| Mauritius | 12 |
| Mauritania | 24 |
| Mozambique | 4 413 |
| Nigeria | 60 |
| Uganda | 6 |
| Central African Republic | 2 |
| Rwanda | 18 |
| Sao Tome and Principe | 4 278 |
| Senegal | 333 |
| Seychelles (I) | 1 |
| Sierra Leone | 84 |
| Sudan | 11 |
| Swaziland | 6 |
| Tanzania | 324 |
| Togo | 4 |
| Tunisia | 26 |
| Zaïre | 197 |
| Zambia | 9 |
| Zimbabwe | 64 |

| | |
|---|---|
| The Americas | 36 197 |
| North America | 10 727 |
| Canada | 2 254 |
| United States | 8 473 |
| Latin America and the Caribbean | 25 470 |
| Argentina | 404 |
| Barbados | 2 |
| Belize | 1 |
| Bermuda | 6 |
| Bolivia | 30 |
| Brazil | 20 045 |
| Chile | 166 |
| Colombia | 204 |
| Costa Rica | 10 |
| Cuba | 101 |
| El Salvador | 12 |
| Ecuador | 33 |
| Grenada | 1 |
| Guatemala | 20 |
| Guyana | 6 |
| Haiti | 2 |
| Honduras | 6 |
| Jamaica | 1 |
| Mexico | 143 |
| Nicaragua | 4 |
| Panama | 35 |
| Paraguay | 17 |
| Peru | 159 |
| Dominican Republic | 32 |
| Suriname | 4 |
| Trinidad and Tobago | 17 |
| Uruguay | 76 |
| Venezuela | 3 933 |
| Asia | 7 190 |
| Afghanistan | 1 |
| Saudi Arabia | 19 |
| Bahrain | 16 |
| Bangladesh | 104 |
| China | 2 408 |
| United Arab Emirates | 3 |
| Hong Kong | 296 |
| India | 1 067 |
| Indonesia | 9 |
| Iran | 564 |
| Iraq | 157 |
| Israel | 87 |
| Japan | 696 |
| Jordan | 74 |

| | |
|---|---|
| Kuwait | 19 |
| Lebanon | 177 |
| Malaysia | 25 |
| Myanmar | 2 |
| Palestine | 10 |
| Pakistan | 891 |
| Qatar | 2 |
| Republic of Korea | 162 |
| People's Democratic Republic of Korea | 24 |
| Singapore | 41 |
| Sri Lanka | 14 |
| Syria | 70 |
| Thailand | 34 |
| Taiwan | 4 |
| Viet Nam | 4 |
| Yemen | 2 |
| Oceania | 489 |
| Australia | 443 |
| New Zealand | 46 |
| Stateless | 276 |
| Overall total | 174 638 |

## D. Acquisition and retention of Portuguese nationality

19. Problems of racial discrimination arise essentially within the country and are not connected with nationality. Nevertheless, the acquisition or retention of Portuguese nationality is a factor that helps to explain Portugal's attitude to the foreigners (sometimes associated with problems of xenophobia) who have integrated into the multiracial and multiethnic society of Portugal. Since the Constitution forbids the conducting of surveys on the racial or ethnic component of the population, it is impossible - despite awareness of its composition - to measure in figures the different ethnic groups that make up Portuguese society. Tables 2 and 3 for the year 1997 show that applications to acquire or retain Portuguese nationality are nearly always accepted, that their number was highest in the case of Cape Verde, and that the busiest month in the period January-August 1997 was February.

Table 2

Acquisition or retention of Portuguese nationality
(January - August 1997)

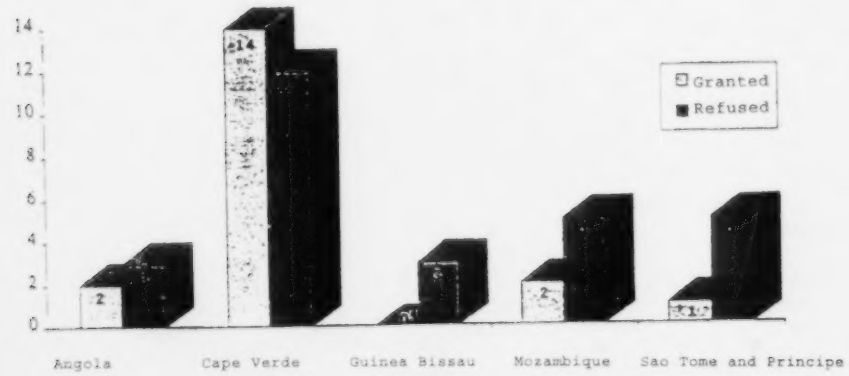

Table 3

Granting or retention of Portuguese nationality
(January - August 1997)

| MONTH | COUNTRY | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Angola | | | Cape Verde | | | Guinea Bissau | | | Mozambique | | | Sao Tome and Principe | | |
| | Granted | | Refused | Granted | | Refused | Granted | | Refused | Granted | | Refused | Granted | | Refused |
| | Grant'd | Retain'd | | Grant'd | Retain'd | | Grant'd | Retain'd | | Grant'd | Retain'd | | Grant'd | Retain'd | |
| January | | | | | | | | | | 1 | | | | | |
| February | 2 | | 2 | 4 | 3 | 12 | | | 3 | | 1 | 5 | 1 | | 4 |
| March | | | 1 | 4 | 1 | | | | | | | | | | 1 |
| April | | | | | | | | | | | | | | | |
| May | | | | | | | | | | | | | | | |
| June | | | | | 1 | | | | | | | | | | |
| July | | | | | | | | | | | | | | | |
| August | | | | 1 | | | | | | | | | | | |
| TOTAL | 2 | 0 | 3 | 9 | 5 | 12 | 0 | 0 | 3 | 1 | 1 | 5 | 1 | 0 | 5 |

Table 4
Extraordinary regularization of clandestine immigrants
(1996)

| From 11 June to 11 December 1996 | Reg.dir. Lisbon | Reg.dir. Coimbra | Reg. dir. Porto | Reg. dir. Faro | Reg. dir. Ponta Delgada | Reg. dir. Funchal | Total |
|---|---|---|---|---|---|---|---|
| Angola | 8 323 | 224 | 415 | 287 | 2 | 4 | 9 255 |
| Algeria | 47 | 1 | 3 | 14 | | | 65 |
| Bangladesh | 743 | | 7 | 2 | | | 752 |
| Brazil | 1 398 | 272 | 474 | 170 | 5 | 11 | 2 330 |
| Cape Verde | 6 580 | 30 | 54 | 188 | 18 | 2 | 6 872 |
| China | 961 | 139 | 366 | 136 | 6 | | 1 608 |
| Guinea Bissau | 5 030 | 96 | 79 | 101 | | 2 | 5 308 |
| Hungary | 4 | 17 | 4 | | 1 | | 26 |
| India | 899 | 2 | 2 | 12 | | | 915 |
| Morocco | 314 | 65 | 92 | 49 | | | 520 |
| Mozambique | 365 | 23 | 11 | 16 | | 1 | 416 |
| Pakistan | 1 735 | 8 | 9 | 2 | | | 1 754 |
| Romania | 411 | 11 | 11 | 27 | | 1 | 461 |
| Russia | 34 | 5 | 13 | 1 | 1 | | 54 |
| Sao Tome + Principe | 1 478 | 28 | 32 | 11 | | | 1 549 |
| Other | 2 500 | 161 | 218 | 149 | 106 | 63 | 3 197 |
| Total | 30 822 | 11 082 | 1 790 | 1 165 | 139 | 84 | 35 082 |

### E. Extraordinary regularization of clandestine immigrants

20. The extraordinary regularization of clandestine immigrants is part of the effort to integrate the different elements of Portuguese society into a multiethnic and multiracial society. Because of the large numbers of foreigners, mostly from the Portuguese-speaking countries, entering the country in an irregular manner, two special campaigns for the extraordinary regularization of clandestine immigrants were organized, one in 1992 and the other from June to December 1996, so that these persons might enjoy full status in Portugal together with the economic, social and cultural rights conferred by such status (see also paragraph 59, in section D.4 of chapter II below).

21. The results of this regularization of clandestine immigrants were as follows: from 11 June to 11 December 1996 (period of regularization) a total of 35 082 persons were legalized: 9 255 from Angola, 2 330 from Brazil, 6 872 from Cape Verde, 5 308 from Guinea Bissau, 416 from Mozambique and 1 549 from Sao Tome and Principe. Those with no initial links with Portugal include 1 754 Pakistanis and 1 608 Chinese.

22. Three sets of statistics relating to the demographic composition of the population of Portugal for 1996 and 1997 prepared by the Plan Division of the Aliens and Frontiers Department will be found in annex. */

## II. GENERAL SITUATION REGARDING RACIAL DISCRIMINATION

### A. Observations of the Committee on the Elimination of Racial Discrimination on the submission of the third and fourth reports

23. When the third and fourth periodic reports of Portugal (CERD/C/179/Add.2) were submitted in March 1991, the Committee formulated several observations (see the Committee's report submitted to the General Assembly, A/46/18, paragraphs 110 to 126). Specific points of information on the subjects raised by the Committee during discussion of the previous reports are given below, even if several of these points will be dealt with in greater detail in the second part of this report.

#### 1. Demographic composition of the population

24. The demographic composition of the population is a function of Table 1 above showing the foreign population. The rate of unemployment is currently 7.3%. With regard to education, the objective for 1999 is to offer pre-school education to 90% of children aged five, 75% of children aged four and 76% of children aged three; to achieve this, 45 000 teaching posts will be created, through public investment for the creation of 567 classrooms per year.

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*/ These annexes may be consulted in the archives of the Secretariat.

2. Mother tongue of the population

25. The mother tongue of the population is Portuguese. A minority language with a very few speakers, Mirandês, exists in the north-east of the country; optional classes exist in the local schools for those who wish to follow them.

3. Campaigns of extraordinary regularization of clandestine immigrants

26. With regard to residence permits, there have been two campaigns for the extraordinary regularization of clandestine immigrants, as already stated (see paragraphs 20 and 21), showing evidence of Portugal's tendency to assimilate foreigners. The figures for the campaign that took place from June to December 1996 are given in Table 4. This tendency to assimilate is also evidenced in the granting or retention of nationality (see paragraph 19 above). The criteria involved for the granting of Portuguese nationality are mentioned in connection with article 5 under the heading of "Political rights" (see paragraphs 138 to 145 below).

4. Strengthening of European identity

27. The strengthening of European identity mentioned and maintained in paragraph 5 of article 7 of the new text of the Constitution does not affect non-European citizens, who retain all the rights recognized to them by a democratic society. This strengthening of European identity refers specifically to the regional level, in the European international organizations (European Union, Council of Europe, etc.), and the effort towards economic, social, political and human integration pursued by Portugal.

5. Legal consultation offices

28. The legal consultation offices mentioned below (see paragraphs 72 to 74 and 115) are currently 11 in number. They are available to all citizens who require information on the functioning of justice and are desirous to know their rights without having to go through a lawyer, particularly on account of the costs a consultation would normally involve.

6. High Commissioner for Immigration and Ethnic Minorities

29. The High Commissioner for Immigration and Ethnic Minorities is currently responsible for questions associated with the problems of discrimination, racism and xenophobia. He follows in the wake of institutions such as the Commission for the promotion of human rights and equality in education and represents the effort of the Portuguese State to ensure combat against discrimination, racism and xenophobia. This High Commissioner comes under the authority of the presidency of the Council of Ministers (for more details, see paragraphs 54 and 55 below).

7. Jurisprudence relating to Gypsies

30. With regard to jurisprudence relating to Gypsies, some new developments are mentioned in the commentary to article 2, that is, in section B, entitled "Jurisprudence relating to minorities" and in the commentary on article 4 entitled "Recommendation 72/A/96 of the Ombudsman" (see paragraphs 80 to 90, 104 and 105 below).

8. Skinheads

31. On the question of skinheads, reference should be made to the commentary on article 4, that is, in section B, entitled "The MAN decree of the Constitutional Court" (see paragraphs 100 to 103 below).

9. Education

32. The personal identity of citizens is always the ultimate objective of education. In this respect, educational programmes on human rights have been established and special measures are taken for the education of the most disadvantaged groups. The "Inter-cultures" data bank shows that the class of the population that suffers the worst failures and has the most school drop-outs is the Gypsies. For fuller information, see the commentary on article 7 in paragraphs 292 to 340 below.

B. Important provisions of the Constitution

1. State based on the rule of law

33. Portugal is a social, democratic and non-discriminatory State based on the rule of law (arts. 1 and 2 of the Constitution). In regard to racial discrimination, some more specific provisions of the Constitution may be mentioned. Thus, a Portuguese citizen is a person considered to be a citizen by the law or by an international convention (art. 4). Article 13 sets out the general principle of non-discrimination and equality, providing in paragraph 2 that "no-one may be privileged, favoured, disadvantaged, deprived of a right or exempted from a duty on account of his or her ascendancy, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social condition".

2. Foreigners

34. As it has been said, the fact of being foreign sometimes evokes in nationals a different, and possibly discriminatory attitude to foreigners. However, in regard to foreigners, stateless persons and European citizens, article 15 of the Constitution establishes the following:

> "1. Foreigners and stateless persons residing in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens.
>
> 2. Political rights, the exercise of public functions that are not of an essentially technical nature and the rights and duties which the Constitution and the law reserve exclusively for Portuguese citizens are excluded from paragraph 1.
>
> 3. Citizens of the Portuguese-speaking countries may be granted, by means of an international convention and under conditions of reciprocity, rights that are not conferred on foreigners, except for access to titularity of organs of power and organs of the government of autonomous regions, service in the armed forces and diplomatic careers.

4. The law may grant to foreigners resident in the national territory, in conditions of reciprocity, active and passive electoral capacity to elect members of the organs of local power.

5. The law may also grant to citizens of the member States of the European Union resident in Portugal, in conditions of reciprocity, the right to elect and to be elected as deputies to the European Parliament.".

3. Personal rights of every citizen

35. In its Title II, "Rights, freedoms and personal guarantees", the Constitution in article 26, under the heading "Other personal rights", provides in paragraph 1 that "all are recognized to have the rights to personal identity, development of personality, civil capacity, citizenship, good name and reputation, image, speech, protection of the intimacy of private and family life, and legal protection against any form of discrimination". This right to the enjoyment of personal rights is addressed to all, and cannot be diminished on account of race, colour or the fact of being a foreigner.

4. Asylum, expulsion, extradition

36. Situations connected with the right to asylum, expulsion and extradition could give rise to discriminatory treatment or abusive behaviour, even on the part of the authorities, if not carefully regulated. These situations concern foreigners who are sometimes not of the same colour or race, and they therefore need to be taken into account in this report on racial discrimination.

37. In regard to expulsion, extradition and the right to asylum, article 33 stipulates:

"1. Portuguese citizens cannot be expelled from the national territory.

2. Expulsion of anyone who has entered or is found illegally on the national territory, who has obtained a residence permit or has submitted an application for asylum that has not been refused, shall be determined by a judicial authority only; the law shall provide for expeditious decision.

3. Portuguese citizens may only be extradited from the national territory, in conditions of reciprocity established by international convention, in cases of terrorism and organized international crime, providing the juridical order of the requesting State contains guarantees of fair and equitable procedure.

4. No-one can be extradited for political reasons or crimes that carry, under the law of the requesting State, the death penalty or a penalty resulting in irreversible damage to physical integrity.

5. No-one may be extradited for crimes punishable, under the law of the requesting State, by a penalty or safety measure depriving or restricting freedom in perpetuity or for an indefinite duration, except in conditions of reciprocity established in an international convention and on condition that the requesting State offers guarantees that such penalty or safety measure will not be applied or executed.

6. Extradition can only be determined by a judicial authority.

7. The right of asylum is guaranteed to aliens and stateless persons who are persecuted, or under a serious threat of persecution, in consequence of their activities on behalf of democracy, social or national liberation, peace between peoples or liberty or human rights of individuals.

8. The status of political refugees is defined by law.".

5. The question of East Timor

38. The question of East Timor is important for Portugal. Under the heading "Self-determination and independence of East Timor", article 293 of the Constitution stipulates:

"1. Portugal remains bound by her responsibilities under international law to promote and guarantee the right to self-determination and the independence of East Timor.

2. The President of the Republic and the Government have the power to take all necessary action for achieving the objectives stated in paragraph 1.".

39. It is also important to ensure proper reception of people from Timor; a commission has therefore been set up for their reception (see below paragraphs 58, 221 and 222).

C. On some incidents of racial discrimination

40. A brief description follows of the general situation in Portugal in regard to racism and racial discrimination, without prejudice to the greater details given in the second part of this report. Information will also be found further on concerning the legal measures taken and the texts that are applicable.

1. Incidents with Blacks

41. Since 1985 there have been a number of violent actions of a racist nature. They are essentially the making of skinheads inspired by a neo-Nazi ideology and extreme radicalism, and Blacks are their main target.

42. In 1989, a well known far left political leader was assassinated. The measures then decreed by the public authorities resulted in a considerable fall-off in this type of action after 1989, to the extent that the Constitutional Court decided that it could not declare the extreme right-wing organization, the National Action Movement (MAN), defunct as it considered that it had already ceased to exist. Thus, even if the perpetrators of the crimes were members of the MAN, there was no proof that there was a link between the crimes and the organization itself (see commentary on article 4, in paragraphs 100 to 103 below).

43. In January 1992, an African was found dead. The end of 1992 was also marked by a wave of violence in football stadia provoked by skinheads, probably of a racist nature. In February 1993, another African was killed at Feijó, and

in June 1993 another African was also found dead; the persons who committed these crimes are now in prison.

44. In the meantime, other incidents involving skinheads were reported. But several incidents caused by young Blacks were also reported. These may be due to the difficult situation they are experiencing, but they may also be a form of revenge. These actions usually occur in big urban areas.

45. Other incidents of a racist or xenophobic nature have been observed, the (occasional) submission of petitions with a large number of signatures to the authorities protesting against the installation of individuals of a certain race or colour (Gypsies and black Africans in particular), or demonstrations organized to the same end. Racist mural graffiti attributed to school students have also be found, and some fights of a racist character have occurred in certain establishments open at night, but these incidents have not been very common. Gypsies are the most common victims of these attacks, followed by Blacks and people returning from the former colonies.

46. In 1995, some very serious incidents broke out, disturbing the apparent peace. On 10 June 1995, the day commemorating Camões and the Portuguese communities, a group of 30 skinheads armed with knives burst into a neighbourhood generally frequented by people in search of nocturnal entertainment. Their violence consisted in pursuing and attacking any Black they might meet, and as a result one man was assassinated and 12 injured. Nine skinheads were captured by the police and the judge decided that they should await judgement in prison (preventive detention).

47. This act of violence was almost unanimously condemned. The Democratic People's Union (UDP), a party of the extreme left, associated it with the comments made on the same day by certain figures identified with the extreme right. This act was also condemned by the youth association "Olho vivo", which runs an antiracist telephone line. "SOS-racism", an NGO, also condemned this act of violence. The Lisbon municipal authority also criticized it through its division of social support and the municipal council for immigrant communities and ethnic minorities.

48. At the funeral of the victim - Alcindo Monteiro - the following Thursday at Barreiro, the bishop of Setubal conducted the ceremony and made a speech against racism and discrimination. The bishop's presence was seen as important, for he has acquired a considerable reputation in matters of human rights as a result of his indefatigable efforts in this domain. In the days that followed, there were antiracist demonstrations and a few acts of violence. However, there were no sequels to these affairs and no incident of such gravity has occurred since then. The skinheads were given heavy prison sentences in 1997, going as far as 18 years for six of them.

2. Incidents with Gypsies

49. The other sector in which phenomena of intolerance and discrimination are to be found is among the Gypsy population. For this population, a jurisprudence that will be examined below (paras. 80 to 90) has had to make its way within the national legal system for equality to be re-established.

50. Gypsies are sometimes the targets for threats or measures by certain individuals, and in a few instances by public authorities, to have them expelled from a place of residence. In 1996, under strong pressure from the population, the mayor of Vila Verde decided to have the housing accommodating the Gypsy population destroyed on the allegation of drug trafficking; the Civil Governor (Prefect) of the district of Braga immediately opposed this measure, taking his complaint to the Ombudsman, who formulated a recommendation calling upon the mayor to reinstate the Gypsies (see, under the commentary on article 4, recommendation 72/A/96 of the Ombudsman, in paragraphs 104 and 105 below).

51. The procedure is currently running its course. Meanwhile, the family of the head of the Gypsy community - and the head himself - have been the object of criminal proceedings for drug trafficking. Only a few individuals have been convicted, and the innocence of the head of the family and most of the Gypsies has been established by the facts. Because of his intervention, the Prefect of Braga has received strong support from all intellectual sectors of Portuguese society and from several political parties.

52. After this description of the Portuguese situation, it is useful to briefly analyse the recent measures adopted internally and to indicate the significance of Portugal's participation in the activities of international organs.

## D. Recent internal measures to combat racism and intolerance

53. In the framework of Portuguese domestic law, several measures have been implemented to combat possible violations of the principle of non-discrimination and the protection of ethnic minorities, whether they be composed of Portuguese citizens or of foreigners.

### 1. High Commissioner for immigration and the ethnic minorities

54. Decree law 296-A/95 of 17 November, relating to the Organization Act of the thirteenth constitutional Government, provided for the creation of the High Commissioner for immigration and the ethnic minorities and placed him under the presidency of the Council of Ministers. The creation of this post was determined by the new challenges facing Portugal as a country of immigration, for Portugal has traditionally been a country of emigration and it is only quite recently that it has become a country of immigration. This has given rise to the need to create measures to integrate the families of immigrants into Portuguese society. The ultimate objective of this policy is to prevent xenophobia, intolerance and discrimination against foreigners resident in Portugal.

55. The High Commissioner has four major functions:

1. To stimulate consultation and dialogue with entities representing immigrants or ethnic minorities in Portugal and to study the question of the insertion of immigrants and ethnic minorities, in collaboration with the social partners, social solidarity institutions and other public or private entities active in this domain;

2. To help to improve the living conditions of immigrants in Portugal, so as to make it possible for them to integrate into society, with respect

for their identity and cultures of origin. He must also help to ensure that all citizens residing legally in Portugal enjoy the same dignity and opportunities, so as to eliminate discriminations and combat racism and xenophobia;

3. To monitor the action of the different services of the public administration competent in regard to the entry, stay and departure of foreign citizens in Portugal, respecting their functions and those of the competent members of the Government. He must collaborate in the definition and follow-up of policies to actively combat exclusion, by stimulating interdepartmental horizontal action by the services of the public administration and the Government departments intervening in the sector;

4. To propose measures, notably of a regulatory nature, to support immigrants and ethnic minorities.

2. Working Group for the Equality and Insertion of Gypsies

56. The Working Group for the Equality and Insertion of Gypsies was established by Council of Ministers resolution 157/96 of 19 October and addresses two fundamental objectives: on the one hand, detailed analysis of the difficulties of the Gypsies in achieving insertion into Portuguese society, and, on the other hand, the development of proposals to help to eliminate these situations of social exclusion (see, in paragraphs 223 to 234 below, the commentary on article 5 relating to the special measures for the integration of ethnic minorities, and, in paragraphs 299 to 313, the comments on article 7 dealing with the education of Gypsies).

57. In January 1997, the Working Group (chaired by the High Commissioner for immigration and the ethnic minorities) submitted a progress report whose basic features were recognition of a certain tendency in Portuguese society towards exclusion and indifference towards Gypsies. Once the report had been submitted and suggestions formulated the Working Group was dissolved and replaced by a group responsible for monitoring the application of the measures for the integration of Gypsies.

3. Interministerial Commission for the Reception of the Timorese Community

58. In the framework of the implementation and respect for the principle of non-discrimination, the Interministerial Commission for the reception of the Timorese community was created by resolution 53/95 (Official Journal, 2nd series, 7 December 1995). This Commission has the task of coordinating and assessing proposals aimed at the development of integrated policies favouring the reception and insertion of the Timor community in Portugal (see also the commentary on article 5 in paragraphs 221 and 222 below). The creation of this Commission is naturally related to recognition of the right to self-determination for East Timor, to which Portugal is deeply committed. In the more global perspective of promoting self-determination in East Timor, Portugal is giving support to the Timorese who seek refuge in Portugal.

4. Process of extraordinary regularization of clandestine foreign immigrants

59. Law 17/96 of 24 May organized, as we have already described (paragraphs 20 to 22), a process for the extraordinary regularization of clandestine foreign immigrants. This was coordinated by the National Commission for Extraordinary Regularization (CNRE) which examined the applications. This regularization was necessary in order to allow foreigners to fully enjoy their social, economic and cultural rights, particularly in regard to work, social services and access to housing, since rehousing programmes are only open to persons in a regular situation. This process of extraordinary regularization took place between 11 June and 11 December 1996. The figures relating to this extraordinary regularization are given in Table 4 above.

E. Participation of Portugal in the activities of international organs

60. At the international level, the position of Portugal reflects the provisions of its Constitution and its internal policy. Thus, Portugal undertakes to respect human rights and participates in the adoption of measures for their promotion, and undertakes to introduce them and ensure respect for them under domestic legislation.

1. Council of Europe: "All different, all equal" campaign

61. Portugal participated actively in the "All different, all equal" campaign under the auspices of the Council of Europe. This campaign started in December 1994, proceeded with various youth activities in the year 1995, in 1996, and was renewed for the year 1997. It was coordinated in Portugal by the Secretary of State for Youth and its chief support came from the Portuguese Youth Institute. Several ministries were represented in the organization of the campaign, including the Aliens and Frontiers Department and the Ministry of Labour.

62. But the campaign did not only involve representatives of public bodies. There were numerous nongovernmental organizations, students' association and even youth groups taking part. A fund was set up and enabled activities of all sorts to be carried out, all of them associated with awareness of the problem of racism and xenophobia; in 1995, a youth train joined Portugal with other countries of Europe, destination Strasbourg.

63. In the framework of the Ministry of Justice, it was stressed to the entities more directly involved with the organization of the campaign that it should not be limited to young people but should draw the attention of the whole of society to certain problems, such as those of foreigners and their rights, and should include certain groups in all activities, such as the group of children received into special schools because of family difficulties, and minors in general. The proposals of the Ministry of Justice were formulated with the collaboration of the Bureau of Documentation and Comparative Law of the Office of the Procurator-General of the Republic, the Institute for Social Reinsertion and the prison services.

2. Council of Europe: European Commission against Racism and Intolerance

64. The European Commission against Racism and Intolerance of the Council of Europe operates in a framework composed of country groups and carries out its action by means of country by country analysis in which countries act as

rapporteurs on each other within each group. Following the presentation of the reports on each country, the Commission formulates recommendations on legislative measures of a civil, administrative and penal nature to be adopted in the country concerned and suggests social measures to that country. Portugal thus replied to a questionnaire from the Commission on the various problems relating to racism and xenophobia. Portugal was also designated rapporteur for Luxembourg, Romania and Cyprus. After preparing its reply to the questionnaire on its internal situation, Portugal accepted and discussed the proposed recommendations for Portugal. The Commission completed its work and put the results on the Internet (http://www.ecri.coe.fr).

3. United Nations Organization

65. Portugal responds frequently to the questions put to it, for example, by the Office of the High Commissioner for Human Rights, and takes an active part in the work of the Commission on Human Rights.

4. European Union

66. In the framework of the European Union, Portugal was a co-author of the joint action of 15 July 1996 adopted by the Council on the basis of article K.3 of the Treaty establishing the European Union, concerning action against racism and xenophobia, and the institution of the European Monitoring Centre on Racism and Xenophobia. It also played an active part in the European Year against Racism decreed by the European Union, organizing several actions of a diverse nature to draw the attention of citizens to the problem of racism and intolerance. Finally, it has taken part in Community meetings that have tried to identify the problem in order to prepare for closer harmony between legislation on these issues at the European level.

## Part II

## INFORMATION RELATING TO ARTICLES 2 TO 7

### Article 2

### A. General considerations

67. The previous reports (CERD/C/101/Add.3 of 1985, CERD/C/126/Add.3 of 1988 and CERD/C/179/Add.2 of 1990) and their presentation showed Portugal's determination to condemn all forms of racial discrimination and to adopt measures to proscribe them and to afford protection, in general, to rights, freedoms and guarantees. This determination is to be found in various provisions of the Constitution and domestic legislation attempts to reaffirm it in a concrete manner. The texts mentioned below reflect this concern.

#### 1. State of siege and state of emergency

68. Law 44/86, of 30 September, concerning the regimes of state of siege and state of emergency, provides that their declaration shall in no way affect rights to life, integrity and identity of persons, civil capacity and citizenship, the principle of non-retroactivity of criminal law, the right of persons accused to a defence, and freedom of conscience and religion. In cases where the exercise of rights, freedoms and guarantees may be suspended, the principle of equality and non-discrimination is always respected.

69. The Constitution has also, in the text maintained in the fourth revision of the Constitution, article 19, preserved the provision that deals with these two situations, clarifying their scope (paras. 2 and 3) while stressing the principles of proportionality and the need for the measures adopted by the declaration.

70. Citizens whose rights, freedoms and guarantees have been violated by the declaration of the state of emergency or by any unconstitutional or illegal measure adopted during its application are entitled to an indemnity, according to the general terms of the law, their right of access to the courts being in no way affected for the defence of rights, freedoms and guarantees infringed or threatened with infringement.

#### 2. Code of Penal Procedure

71. The new Code of Penal Procedure, adopted by decree-law 78/87, of 17 February, aimed to construct a system making it possible to attain the aims of the realization of justice and the preservation of the fundamental rights of individuals while at the same time ensuring the security of the community. The solutions adopted have applied the principle of equality of arms in procedure and make for the strengthening of the rights to defence of the accused (art. 61). To this end, for example, the intervention of an interpreter is foreseen in procedures in which someone who is not fluent in the Portuguese language is involved, without that person incurring any costs (art. 92).

3. Access to law and to the courts

72. In December 1987, the Government legislated on access to law and to the courts. A system promoting the right to information and legal protection, foreseen by article 20 of the Constitution was thereby instituted (see also, in paragraphs 109 to 113, the commentary on article 5 concerning access to justice). This helps to ensure that no-one is prevented, by their social or cultural condition or by the lack of financial means, from asserting or defending their rights. Legal information is of paramount importance in that it establishes a link between citizens and justice. In this spirit, reception services are gradually being created to work with the courts and the judiciary services.

73. Legal consultation offices give out legal information free of charge through lawyers appointed for this purpose by the bar, the costs being borne by the Ministry of Justice. There are at present 11 such offices, at Lisbon, Porto, with an extension at Guimarães, Coimbra, Evora, Lamego, Covilhã, Ponta Delgada, Vila do Conde, Faro, Hangra do Heroísmo and Vila Nova de Gaia.

74. It should be stressed that foreigners and stateless persons residing legally in Portugal enjoy this right to legal protection. This same right is also recognized to non-resident foreigners who are nationals of countries where a similar legal provision is applicable to Portuguese citizens.

4. Access by foreigners to legal aid

75. Here we have a situation in which the Constitutional Court has played a predominant role. When it decides three times - in three different proceedings - that a law is unconstitutional, that law is expunged from the legal order. This is what has happened to the former text of the legislation on legal aid. In July 1993, and in August 1994, the Aliens and Frontiers Department refused to grant asylum to two foreign nationals, who wished to appeal against this decision. Not having the means, they sought free assistance from a lawyer.

76. They came up against the obstacle of the legislation on legal aid (decree-law 387-B/87 of 29 December and decree-law 391/88 of 26 October). Article 7 of the first legislative text contained the provision that "foreigners and stateless persons habitually resident in Portugal enjoy the right to legal protection". And article 1 of the second legislative text provided as follows:

> "1. For legal protection to take effect, usual residence of foreigners and stateless persons holding a valid residence permit mentioned in paragraph 2 of article 7 of decree-law 387-B/87, of 29 December, implies regular and continuous residence in Portugal for a period of not less than one year, except where there is a legal regime arising out of a treaty or international convention which Portugal is bound to respect;
>
> 2. The foreigner to whom asylum is granted or who enjoys the status of refugee may benefit from legal protection from the date on which the right to asylum or recognition of refugee status was granted."

77. From these articles it was deduced that asylum seekers could not enjoy the benefit of legal aid, although possessing the prerequisite conditions for it to

be granted. The judges did not apply the texts in question for infringement of articles 13.2, 15.1 and 2, and 20.1 and 2 of the Constitution. The questions were referred in a compulsory appeal to the Constitutional Court which ruled that the legislative texts in question were unconstitutional. These decrees were published in the Official Journal, 2nd series, of 1 August 1995. The third decree of the Constitutional Court on this question was handed down as number 316/95 and published in the Official Journal, 2nd series, of 31 October 1995.

78. A declaration of unconstitutionality with general binding force followed, expunging the parts of the legislative texts mentioned from the Portuguese legal order, and in 1996 the legislation was amended by law 46/96 of 3 September which now permits foreigners whose situation is not regularized to seek legal aid for their regularization proceedings.

5. Broadcasting and television

79. Law 87/88, of 30 July, concerns exercise of the activity of broadcasting within the national territory. According to article 8, freedom of thought in broadcasting includes the fundamental right of citizens to information providing for ideological pluralism and free expression, and the confrontation of different strands of opinion and of thought that are essential to the practice of democracy. But the broadcasting of any programme or message inciting to violence or contrary to criminal law is prohibited. The same goes for law 58/90 of 7 September on television.

## B. Jurisprudence relating to minorities

80. Certain decisions in jurisprudence connected with racial discrimination must be mentioned: in practice, jurisprudence also contributes to the implementation of international conventions. In particular, reference must be made to affairs relating to legislation or to racist acts.

1. Constitutional jurisprudence

81. By its decision 14/80, the Constitutional Commission ruled that the rural service regulations of the National Republican Guard were contrary to the Constitution on the grounds that they infringed the principle of non-discrimination: the regulations allowed these police to treat Gypsies in a discriminatory manner.

82. Following this, the Constitutional Court, in its decision 452/89, gave its ruling on article 81.2 of the service regulations of the National Republican Guard, declaring it contrary to the Constitution, as decided by the Constitutional Commission.

83. Article 81 of the regulations provided that in regard to nomads (an expression not deemed to be unconstitutional by the Constitutional Court), the National Guard should exercise particular surveillance over caravans and groups of nomads habitually travelling the roads, living from commerce or other activities associated with an itinerant life. The Guard maintains surveillance of their travels so as to prevent the perpetration of crimes against property or people in the countryside and public places where the caravans usually stop. Article 81.2 also provided that, in case of suspicion, searches could be carried out in caravans on the road or at resting places, always identifying the leaders

of the groups. When the destination of a journey was known to an agent of the Guard, it was his duty to inform the commander of the arrival duty station.

84. The Constitutional Court decided that night searches without a judicial warrant were unconstitutional; the regulations of the National Guard were therefore judged to be unconstitutional on this point (this decision was also analysed in Portugal's previous report (CERD/C/179/Add.2 of 31 October 1990, in paragraphs 50 to 54)).

2. Administrative jurisprudence

85. The Administrative Court of First Instance of Porto examined the regulations of the municipality of Vila do Conde which required all Gypsies with no official residence to report their arrival in the area of the municipality, and to leave it within eight days. This measure gave rise to strong indignation in the press and sharp reactions of disapproval on the part of the Procurator-General of the Republic and the Ombudsman

86. Following these reactions, the municipality adopted new regulations, revoking the old ones, stressing that the new text was aimed at anyone, whether or not they were Gypsies, who put up any clandestine form of housing, stating that such housing should be destroyed. The Public Ministry contested this act which continued to be illegal because in reality it was aimed at the Gypsies, and in this sense violated the principle of equality.

87. The Court did not refer to the problem of the Gypsies as such, but to the question of the invalidity of the administrative act. It decided, however, that the essential problem was that of the persons affected by the act, the order to destroy housing and the impossibility of rebuilding it in any other place in the area of the municipality. The central point of the decision was that the act, too general and abstract, could therefore not have force of law because it was impossible to identify the persons at whom it was directed; hence, the act was null and void.

88. To summarize the Court's decision, an administrative act which is not based upon an individual situation and which does not in itself single out the individual to whom it is intended to be directed is null and void because the essential element of identification is missing. Reference to persons putting up housing does not correspond to the individualization required by the second paragraph of article 124 of the Code of Administrative Procedure. The result was that the Gypsies were not expelled.

3. Supreme Court of Justice

89. The last decree of the Supreme Court of Justice, of 21 September 1994, is also important. The District Court of Lamego convicted a Gypsy woman for drug trafficking; in the grounds of the conviction it was stated, and implemented in practice by this tribunal, that the sentence should be augmented because the woman was a Gypsy; indeed, as it was said: "Gypsies have a natural tendency to drug trafficking - it is part of their customs and traditions".

90. The decree of the Supreme Court affirmed that a notorious fact is a question of law and may therefore be examined by the Supreme Court of Justice. The Supreme Court then ruled that it is not general knowledge and it is not

obvious that Gypsies have a greater inclination to drug trafficking than any other ethnic group. The decision of the court of first instance was therefore illegal since it founded part of the punishment on the fact that the woman was a Gypsy. The decision was revoked in regard to the part concerning the augmentation of the sentence.

## Article 3

91. Between the submission of the last report and the present report, the situation in South Africa has undergone a radical transformation with the commencement and consolidation of a process of political transition in that country, initiated in February 1990 with the liberation of Mr Nelson Mandela, and culminating in the holding of the first democratic and multiracial elections on 27, 28 and 29 April 1994 and the subsequent formation of a Government of national unity with an ANC majority.

92. Between 1990 and 1994, the period during which the Government of Mr Frederik de Klerk lifted the state of emergency and the segregationist legislation that was still in force, the European Community and, naturally, Portugal, made every effort to support the measures and mechanisms gradually imposed to bring about political opening, respect for human rights and equality between South Africans.

93. To this end, the European Community took some timely decisions of a political nature, such as the lifting of economic sanctions by the Community and cessation of discouragement of cultural, sporting and scientific contacts with South Africa. At the same time, the substantial financial contribution of the Community to the Special Programme for the victims of apartheid, destined to support projects with an important social impact, must be stressed.

94. On the occasion of the elections in April 1994, having regard to the historical and cultural ties that have always linked Portugal to the continent of Africa, and to the size of the Portuguese community in South Africa, it was considered to be in the national interest to send a group of Portuguese observers to take part in the global international surveillance mission coordinated by the United Nations.

95. The Portuguese Government is conscious of the serious deficiencies by which many South Africans continue to be affected, especially the black majority, principally in terms of employment, housing, education, health and vocational training. Both internationally and within South Africa, Portugal has always most strongly condemned all racially based practices of discrimination, notably by encouraging the Portuguese community in South Africa to support the construction of the "Rainbow Nation" and to play an active part in it.

## Article 4

### A. Juridical condemnation of racism

96. As has already been affirmed, the Portuguese Constitution proclaims the principle of equality and non-discrimination and prohibits associations drawing inspiration from fascist ideology, that is, which adopt, defend or disseminate values such as colonialism or racism.

97. The new Penal Code, adopted by decree-law 48/95, of 15 March 1995, and which came into force on 15 October 1995, deals in article 132.2, section (d), with homicide qualified by racial, religious or political hatred; in article 159, with slavery; in article 239, with genocide; in article 240, with racial discrimination; in article 251, with insult on account of religious belief; in article 254, with profanation of a body or burial place; in article 297, with public incitement to crime; in article 298, with public apology for crime; in article 299, with criminal association; and in articles 300 and 301, with terrorist organizations and terrorism.

98. This condemnation of racism is to be found in the text of the Constitution (art. 160, para. 1, section (d)), when it deals with the status of deputies, and the law which complements that statute (laws 7/93 of 1 March and 24/95 of 18 August). It is stated there that deputies who receive a judicial conviction for participation in organizations with a fascist ideology shall lose their seats. Up to the present, no case of this kind has occurred in Portugal.

99. Article 46.4 of the Constitution in turn prohibits armed associations of a military, militarized or paramilitary type, and racist organizations or organizations that follow a fascist ideology. Law 64/78, on fascist organizations, prohibits inter alia the formation of organizations proclaiming violence or defending fascism, that is to say, "the adoption, defence or dissemination of values, principles, institutions or methods ... in particular, warmongering, violence as a form of political combat, colonialism, racism ...".

## B. The "National Action Movement" (MAN) decree of the Constitutional Court

100. It is necessary here to touch upon decree 17/94 of the Constitutional Court, published in the Official Journal, 2nd series, of 31 March 1994. The Procurator-General of the Republic called for the dissolution of the organization known as the "National Action Movement" (MAN) because it followed the fascist ideology. The ordering of this inquiry was mentioned in Portugal's last report (CERD/C/179/Add.2, para. 80). The Procurator-General alleged that the cultural association "National Action" founded in 1985 had as its aim the establishment of a "nationalist State". It had also published journals entitled "Action", "Offensive", "Manifesto", "Programme Points", "Statutes" and "Vanquish". Its main characteristics were the cult of the national community, the prevalence of its interests over the interests of individuals and the cult of racial and bodily purity, order, discipline and hierarchy; it drew its inspiration from Hitler's Germany, Mussolini's Italy and the Portugal of Oliveira Salazar. Racist and anti-semitic, the symbols of this association were the raised arm salute, the Celtic cross and the swastika.

101. "National Action" advocated violent means. From 1985 to 1989 it grew and associated itself with the totalitarian movement of the skinheads and with foreign parties having the same ideology. The appeal for violence was the culminating point of its action. The death of a known militant of the Revolutionary Socialist Party, on 27 October 1989, was associated with the organization; some people thought the murder had been committed by members of it (see Part 1, paragraphs 41 to 43, on this affair).

102. The organization objected, refuted several points in the allegations made by the Procurator-General of the Republic and declared that it had been

dissolved by decision of its president at the beginning of the 1990s. The Constitutional Court considered the extinction of the National Action Movement to be proved, searches having been made in 1991 by the judicial police. And it considered that links with similar foreign parties and attribution of acts of violence to the organization were not proven. Moreover, having considered that the organization had ceased its activities, there was no longer any reason to declare it to be fascist, since its extinction preceded the declaration of fascism and rendered it pointless. This does not mean that the death of the Revolutionary Socialist Party militant went unpunished, the author of this crime having been convicted. This means that the Court, verifying that the organization was defunct, could not put an end to it, nor initiate the penal proceedings that would have taken place if the organization had been in existence.

103. The serious events of 10 June 1995 mentioned in the first part of this report (paras. 46 to 48) as being committed by skinheads appear to give the lie to the Constitutional Court's decision, in that the skinheads were still keeping up their activities. But this time, the skinheads were arrested and tried and given heavy prison sentences; six of them were sentenced to 18 years' imprisonment.

### C. Recommendation 72/A/96 of the Ombudsman

104. Mention must now be made of recommendation 72/A/96 of the Ombudsman ("Provedor de justiça") in case R-2331/96 (in this connection, see paragraph 50 in Part 1). In August 1996, the mayor of Vila Verde ordered the demolition of Gypsy dwellings under strong pressure from the people who accused the Gypsies of drug trafficking. The Prefect of Braga, the district in which Vila Verde is located, immediately opposed this measure and took the matter to the Ombudsman. The affair gave rise to considerable agitation among the people and aroused indignation among Portuguese intellectuals, all of whom supported the Prefect of Braga.

105. The Ombudsman's recommendation was as follows:

> "Concluding that the demolition orders given by the mayor of Vila Verde and their implementation were illegal,
>
> Concluding that the municipal authorities responded to pressure from the people who associate the urban question with the occupants of the buildings demolished - all members of a small Gypsy community subject to disseminated accusations of drug trafficking,
>
> Concluding that the municipality should have properly weighed up the possibilities for legalization of the work under way,
>
> It is recommended:
>
> 1. That the rejection of the application for legalization be revoked, on the grounds of illegality;
>
> 2. With consequent declaration of the nullity of the acts of demolition; and

3. Reparation of the damages inflicted.".

The affair is currently running its course before the courts, as we have seen in paragraph 51 of Part 1.

## Article 5

### A. Preliminary remarks

106. In the four previous reports (CERD/C/101/Add.8, CERD/C/126/Add.3 and CERD/C/179/Add.2), we have described the existing legal framework and the different legislative and administrative measures to constitute a system prohibiting any form of racial discrimination in regard to the right to equal treatment before the courts and any administrative organ, the right to personal security and protection by the State against assault and ill-treatment, and respect for political rights and economic, social and cultural rights.

107. At the same time, following Portugal's ratification of the two international covenants on human rights, the submission of report to the organs of control created by these instruments has taken its natural course - such, for instance, was the case of the second report on the application of civil and political rights (CCPR/C/42/Add.1), submitted in November 1989.

108. This report gives a more detailed analysis of the measures adopted to give effect to the provisions of the Covenant and to paragraphs (a) to (d) of article 5 of the Convention on the Elimination of All Forms of Racial Discrimination.

### B. The right to equal treatment before the courts and any other administrative organs

#### 1. Constitutional provisions

109. As already affirmed, the principle of equality, foreseen in article 13 of the Constitution, is once again the essential foundation for the whole of the existing legal framework. This article has not suffered any amendments following the second revision of the Constitution.

110. Article 20 in turn guarantees the principle of access to justice, covering, on the one hand, the right to information and, on the other hand, the right to legal protection. This provision was substantially altered in the fourth revision of the Constitution (1997). The new text of article 20 is given below:

"Access to the law and the courts"

"1. All are guaranteed access to the law and to the courts in order to defend their legitimate rights and interests; justice shall not be denied for lack of financial resources.

2. All have the right, in accordance with the law, to legal information and consultation, to legal aid and to be accompanied by a lawyer before any authority.

3. The law defines and assures adequate protection of confidentiality in justice.

4. All have a right for the cause in which they are involved to be the object of a decision taken within a reasonable time and through an equitable procedure.

5. For the defence of personal rights, freedoms and guarantees, the law assures citizens of judicial procedures characterized by speed and priority, so as to obtain effective and timely protection against threats or violations of these rights".

The main changes concern paragraphs 2 (right to be accompanied by a lawyer before any authority), 3 (confidentiality of justice), 4 (judgement within a reasonable time and by an equitable procedure) and 5 (judicial procedures characterized by speed and priority). Paragraphs 3, 4 and 5 are entirely new.

2. Access to justice

111. In the comments on article 2 (paras. 72 to 78 above), mention was made of the legislation relating to access to justice (decree-law 387-B/87, of 29 December, and decree-law 391/88, of 26 October, as well as law 46/96, of 3 September). The system instituted aims to guarantee that "no-one shall be in difficulty or be prevented, by reason of their social or cultural condition, or for lack of economic resources, from knowing, asserting or defending their rights" (art. 1 of decree-law 387-B/87).

112. The law provides that these objectives shall be attained by systematized actions and mechanisms of "legal information", on the one hand, and "legal protection", on the other hand. Legal protection has two modalities: legal aid and legal consultation (article 6 of decree-law 387-B/87). Persons without sufficient resources to pay their defenders' fees and to cope, in whole or in part, with the costs of justice, have the right to legal protection (art. 7, para. 1).

113. We have seen (paras. 74 to 78) that foreigners and stateless persons also enjoy the right to legal protection, a right that is also accorded to non-resident non-nationals in irregular situations, provided they fulfil the prerequisites (law 46/96 of 3 September).

114. Legal aid comprises partial or total exemption from payment of the costs of justice, or their suspension, and payment of the services of a defender (lawyer or solicitor), the State ensuring payment of these expenses. This system applies to all courts, regardless of the procedure followed. Legal aid may be requested at any stage in the case and is maintained in appeals procedures, independently of the decision on the substance of the case and extends to all procedures additional to those for which the aid was granted.

115. In the same spirit, a protocol was established between the Ministry of Justice and the bar in 1986, to set up a legal consultation bureau with offices located at the time in Lisbon and Porto. This bureau offers guidance and legal advice free of charge to all persons who do not have the means to engage a lawyer. Legal consultations are provided by lawyers or trainee lawyers who must take account of the ethical rules established by the bar. We have seen

(para. 73) that there are now eleven such offices, located in the main cities of Portugal.

3. The "Provedor de Justiça" (Ombudsman)

116. Article 23 of the Constitution stipulates that citizens may turn to the "Provedor de Justiça" (Ombudsman) on account of actions or omissions by the public authorities. One example is the case of the Gypsies of Vila Verde which we have already mentioned (paras. 50, 104 and 105). Strengthening this concern for the right to equal treatment, the Constitution stresses the independence of the Ombudsman, mentioning it expressly in paragraph 3 of article 23: "The Ombudsman is an independent organ, designated by the Assembly of the Republic". Paragraph 4 of the same article establishes that the organs and agents of the public administration must cooperate with the Ombudsman in carrying out his mission.

4. Administrative jurisdiction

117. Another reflection of this concern for equal treatment is paragraph 10 of article 32, amended in the fourth revision of the Constitution. It is established here that persons accused in procedures for administrative offences, and any other procedure involving sanctions, must be assured of the right to a hearing and a defence.

5. Right to petition and right of *actio popularis*

118. Article 52 of the Constitution, which was also amended in the fourth revision of the Constitution, provides as follows:

> "Right to petition and right of *actio popularis*
>
> 1. All citizens have the right to present, individually or jointly with others, petitions, claims or complaints to the organs of sovereignty or any authority, for the purpose of defending their rights, the Constitution, the law or the general interest, and the right to informed, within a reasonable period of time, of the results of the examination they are given.
>
> 2. The law determines the conditions under which joint petitions submitted to the Assembly of the Republic may be examined in plenary session.
>
> 3. The right of *actio popularis* is conferred on all, individually or through associations for the defence of interests, in the cases and conditions provided by law, including the right to claim compensation on behalf of the injured party or parties, with a view, in particular, to:
>
> (a) advocating prevention, suppression or judicial prosecution of offences against public health, consumers' rights, the quality of life, protection of the environment and cultural heritage;
>
> (b) defending the property of the State, the autonomous regions and the local authorities".

119. *Actio popularis*, foreseen in the Constitution, had never been regulated. However, it was to be found with direct applicability in cases of *habeas corpus* (detention for more than forty-eight hours and preventive de ention not corresponding to the requirements of the law). The law on guarantees for women's associations makes provision for it, granting it to the associations for the protection of the women involved. But doubt remained as to whether it was possible, because it was foreseen, or not yet possible because the clause providing for it did not yet have any means of direct applicability.

120. Law 83/95, of 31 August, on the right to participation in procedure and the right to *actio popularis* resolves this problem, allowing such action where it is foreseen by the law (this is the case of the law on women's associations), and in cases relating to public health, the environment, the quality of life, protection of the consumption of goods and services, the cultural heritage and the public domain.

121. Other than in the case of *habeas corpus* and all cases brought by persons against whom penal action has been illegally initiated, *actio popularis* would not appear to have any justification in the case of crimes, since the victims are taken in hand, in the direction of the penal proceedings, by the Public Ministry. However, since for certain crimes, which would appear to include crimes against public health, the environment, consumers, and other designated fields, the possibility of bringing a complaint is extended to all, and it would appear that the law brings special support to this type of complaint in the penal sphere.

122. *Actio popularis* has a profound administrative and civil significance, associated in the latter case with direct applicability of fundamental rights in relations between citizens. *Actio popularis* also has extremely important technical significance. This consists in the attribution of legitimacy for the initiation of legal proceedings to persons not possessing titularity of interest to act. It permits physical persons to intervene in the domains foreseen by the law.

123. In regard to legal entities, *actio popularis* also permits intervention for the sake of collective interests and disseminated interests, but it lays down one condition (art. 2, para. 1 of law 83/95): the associations and foundations that intervene to defend an interest, although they may be without interest in acting, must be injured in the sense that the interest they are defending must figure in the aims set out in their statutes.

124. It may be asked whether commercial firms can intervene. It would appear that they can if the interest figures in their statutes. In any case, commercial traders can always form associations or foundations with the aim of defending their interests or the interests of trade, and exercise *actio popularis* if these interests are in conformity with the definition of the interests for which the *actio popularis* foreseen in paragraph 2 of article 1 is allowed.

125. The law provides for the objective responsibility of any person infringing the rules relating to the protected interests (art. 23), and insurance is required for any dangerous activity.

6. Responsibility of the Administration and guarantees of those administered

126. In regard to the responsibility of administrative agents, the law on the revision of the Constitution has maintained article 266 under the heading "Fundamental principles" [of the Public Administration]:

> "1. The aim of the Public Administration is to pursue the public interest, with respect for the rights and legally protected interests of citizens.
>
> 2. The organs and administrative agents are subordinated to the Constitution and the law and must exercise their functions with respect for the principles of equality, proportionality, justice and impartiality".

127. In the domain of guarantees of citizens in regard to acts by the administration, paragraphs 4 and 5 of article 268 of the Constitution have been amended:

> "4. Citizens are guaranteed effective jurisdictional protection of their rights or legally protected interests, including recognition of these rights or interests, the right to object to any administrative act that damages them, irrespective of their form, the determination of the administrative acts legally due and the adoption of adequate measures of protection.
>
> 5. Citizens also have the right to object to externally effective administrative rules that damage their rights or legally protected interests".

128. With regard to the right to information and access to administrative data on the part of citizens (paras. 1 and 2 of article 268), paragraph 6 provides that the law shall establish the maximum period within which the Administration must respond.

7. Code of Administrative Procedure

129. With regard to administrative law and citizens' guarantees, the 1990s have seen the appearance of the new Code of Administrative Procedure (decree-law 442/91 of 15 November and decree-law 6/96 of 31 January), legislation on guarantees of exemption of the Public Administration (decree-law 413/93 of 23 December) and clarification of certain aspects of discipline in regard to access to documents of the Public Administration (law 8/95 of 29 March).

8. Code of Penal Procedure

130. Lastly, the most striking features of the Code of Penal Procedure, adopted by decree-law 78/87 of 17 February and which came into force on 1 January 1988, concerning non-discrimination, have been retained. According to the Code, the accused, that is, the person against whom a criminal charge has been formulated (art. 57), should see the exercise of procedural rights and duties assured (art. 60), with recognition of the right to be present at the acts concerning him directly, to choose a defender or request the court to appoint one, to be assisted by a defender in all the acts in which he participates, to be informed

of his rights by the judicial authority or organ of the criminal police before which he has to appear (art. 61).

131. Furthermore, according to article 92, "in cases where a person who does not know or have adequate mastery of the Portuguese language is involved in the proceedings, a suitable interpreter is appointed, with no charge, even if the authority presiding over the act or one of the participants in the proceedings knows the language being used".

### C. The right to personal safety and the protection of the State against assault or ill-treatment

132. Portugal has recently submitted to the United Nations the report prepared pursuant to article 19.1 of the Convention against Torture and other Cruel, Inhuman or Degrading Punishment or Treatment (CAT/C/25/Add.10) which was examined at the nineteenth session of the Committee against Torture, on 13 November 1997. Portugal therefore refers to that report, while stressing that a new report will be submitted to the Committee against Torture in the near future.

133. Three important articles of the Constitution, articles 27, 28 and 30, were examined during the last revision of the Constitution:

(a) Paragraph 4 of article 27 is maintained, establishing that everyone who is deprived of liberty must be informed, promptly and in a manner that is comprehensible, of the reasons for the arrest or detention, and of his or her rights.

(b) Paragraph 2 of article 28 is maintained in its global sense, but has been modified; it now reads: "Preventive custody shall be the exception, and shall not be decreed or maintained when bail or some other more favourable measure that is available under the law can be applied.".

(c) Finally, paragraph 5 of article 30, which remains unchanged, provides that: "Condemned persons who are subjected to a sentence or a security measure involving the deprivation of liberty remain entitled to their fundamental rights, subject to the limitations that necessarily derive from that conviction and from the requirements for its enforcement.".

### D. Political rights

#### 1. Constitutional provisions

134. The fourth revision of the Constitution changed the title of article 15, which now reads: "Aliens, stateless persons, European citizens". The text has not been altered, and reads as follows:

> "1. Aliens and stateless persons temporarily or habitually resident in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens.
>
> 2. Paragraph 1 does not apply to political rights, to the performance of public functions that are not predominantly technical or to rights and

duties that, under the Constitution or the law, are restricted to Portuguese citizens.

3. Citizens of Portuguese-speaking countries may, by international convention and provided that there is reciprocity, be granted rights not otherwise conferred on aliens, except the right to become members of the organs with supreme authority or of self-government of the autonomous regions, to service in the armed forces or to appointment to the diplomatic service.

4. The law can confer upon aliens who reside on the national territory, under conditions of reciprocity, active and passive electoral capacity for the election of members [*titulares*] of organs of local authority.

5. The law can also attribute, in conditions of reciprocity, to citizens of member states of the European Union residing in Portugal the right to elect and to be elected Deputies to the European Parliament.".

135. Aliens and stateless persons temporarily present or residing in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens. Political rights in general, the exercise of public functions not of an essentially technical nature and the rights and duties reserved for Portuguese citizens are excepted from this regime of equality. The law nevertheless provides for the faculty to elect and be elected in municipal elections for nationals of certain countries.

2. Local elections

136. With regard to the capacity to elect and be elected, law 50/96 of 4 September has amended article 2, paragraph 2(a) of decree-law 701-B/76 of 29 December - the electoral law for local communities - which foresees a list to be published by the Government before every electoral act for the organs of municipal authority. Declaration 2-A/97 established that Portuguese citizens and nationals of the European Union, Brazil and Cape Verde, Argentina, Israel, Norway, Peru and Uruguay may vote and that nationals of Portugal, the European Union, Brazil, Cape Verde, Peru and Uruguay may be elected. It is also possible for certain rights of a political nature to be granted to citizens of Portuguese-speaking countries by means of a convention between Portugal and these countries.

137. The number of foreign nationals registered on the lists of the last electoral roll (1997 - elections for the local authorities on 14 December 1997) amounted to 3158 nationals of countries of the European Union and 11 427 citizens of other origins.

3. Nationality

138. Nationality must also be taken into account. The relevant legislation comprises law 37/81 of 3 October, the law on nationality, amended by law 25/94 of 19 August 1994; and decree-law 321/82 of 12 August, regulations on nationality, amended by decree-law 253/94 of 20 October.

139. The following are considered to be of Portuguese origin: children of a Portuguese father or mother born on Portuguese territory or under Portuguese

administration, or abroad if the Portuguese parent is there in the service of the Portuguese State; children of a Portuguese father or mother born abroad if they declare that they wish to be Portuguese or register the birth with the Portuguese civil registry; children born on the territory of Portugal, children of foreigners resident with a valid residence permit for at least six or ten years, depending on whether they are nationals of Portuguese-speaking countries or other countries, provided they are not there in the service of their State of origin and if they declare that they wish to be Portuguese when they do not possess any other nationality.

140. This means, among other important points, that persons born in the Portuguese-speaking countries before the independence of those countries have Portuguese nationality. The law does not deprive them of this nationality, establishing in article 1, paragraph 2, that newborns in those territories are presumed to have been born on Portuguese territory or under Portuguese administration in the absence proof to the contrary.

141. This has been very important for persons resident in Africa wishing to recurn after decolonization, their nationality having been maintained by decree-law 308/A/75 of 24 June. This also means that the children born in Macao up to the moment of transfer of its administration to China will be able to have Portuguese nationality.

142. In addition to this acquisition of nationality by origin, the law provides for the acquisition of nationality by the desire to do so. Nationality may thus be acquired through marriage with a Portuguese national, adoption and naturalization. In the latter case, when the subject is legally of age, has resided in the Portuguese territory for six or ten years (depending on whether he or she is a national of a Portuguese-speaking country), knows the Portuguese language, proves the existence of a link with the Portuguese community, is of suitable civic comportment, is able to care and provide for himself or herself, he or she may apply for naturalization.

143. These aspects of the acquisition of nationality are important in so far as they accord a special privilege to nationals of the Portuguese-speaking countries, who could be affected by discriminatory legislation.

144. This is confirmed by article 9 of law 37/91 on opposition to the acquisition of nationality. Grounds for opposition are the fact that the applicant cannot demonstrate a link with the national community, the commission of a crime punishable with a sentence of more than three years or the exercise of public functions or the accomplishment of compulsory military service for a foreign State.

145. An important feature of Portuguese legislation is that there is no provision for loss of nationality. Nationality once acquired cannot be lost, which means that Portuguese society does not reject its members. No-one can be banished, which is a fundamental guarantee against the application of discriminatory motivations in the process of acquisition of nationality.

## E. Other civil rights

### 1. The right to freedom of movement and choice of place of residence within the country

146. An important factor affecting all the rights of non-Portuguese nationals is the regime governing their entry and stay in Portugal. To this must be added the right of asylum, although this is a political right. The accession of Portugal to the European Community has naturally imposed a legal definition of conditions of entry, stay and departure from the territory for nationals of member States and members of their families, and imposed a distinction between non-nationals originating from a country of the European Union and non-nationals originating from third countries.

#### (a) Identification procedure

147. The first question that arises is the identification of a person, either at border posts or within the country. Within the country, identification is carried out in accordance with law 5/95, of 21 February, which establishes the duty to carry an identity document. Under article 1, agents of authority or of the security services may demand identification of any person present or moving in a public place, or a place open to the public or subject to police surveillance, whenever there are grounds for suspicion that crimes may have been committed against the life and integrity of persons, peace and humanity, the democratic order, the values or interests of life in society or the State, or doubts regarding the entry or irregular stay of that person on Portuguese territory, or if proceedings for extradition or expulsion are under way. It would appear that it is only possible to demand identification when such a doubt exists. There is a link between all the measures for identification and criminal law, on the one hand, and illegal entry to the country, on the other hand.

148. Agents may only demand identification after having shown proof of their status and informed the person in question of his or her rights, the specific circumstances justifying the demand for identification and the various means by which the person may identify him or herself. Omission of this duty to provide information renders the order for identification null.

149. Under article 2 of law 5/95, citizens aged over sixteen years must carry an identification document whenever they are in public places, places open to the public or subject to police surveillance. This document may be the identity card or passport, for Portuguese citizens, the residence permit, alien's identity card or passport for nationals of the countries of the European Union, and the residence permit, alien's identity card or passport for foreign nationals of third countries.

150. If identification is impossible or refused, there is ground for an identification procedure that consists in taking the person to the nearest police station, where he or she will remain strictly for the time required for the identity check, which may in no case exceed two hours. A compulsory record of the identification procedure shall be written in cases of refusal, while a record need not be kept in other cases, where the person to be identified so requests. Where a record is taken, one copy is given to the person identified and one copy to the Public Ministry.

151. The identification procedure is always communicated to a person of confidence of the person retained where he or she so requests; thus, a person retained for a maximum of two hours for identification may ask for a person of confidence to be contacted immediately, although he or she will not be permitted to do this personally.

152. The procedure must, as soon as possible, be replaced by identification by a third party, duly identified and able to guarantee the veracity of the personal details; by bringing the person to be identified into the presence of a person of confidence so that he or she may present the means of identification; or by accompanying the person concerned to the place where his or her identity documents are. Only when it is not possible to proceed to any of these modes of identification will it be necessary to proceed to detention for identification for not more than two hours, with the possibility of taking a record. The law on identification provides for the possibility of communicating with a lawyer. In other cases, the rules of penal procedure are applied (art. 254 et seq. of the Code of Penal Procedure), which allow a detainee to communicate with his or her lawyer.

153. Under article 254 of the Code of Penal Procedure, the object of detention is to bring the detainee before a judge within forty-eight hours, or immediately in a procedural act. In the second case, detention may only be effected by judicial mandate. There is always the possibility of consulting a lawyer, and aid from third parties is also possible (*actio popularis*), whenever the detainee is detained for more than 48 hours (*habeas corpus*).

154. Under article 261 of the Code of Penal Procedure, the detainee is immediately released when it becomes clear that detention of that person was by mistake or outside the scope of cases where legally permissible, or that the measure has become unnecessary.

(b) Entry, stay and departure of foreigners

155. Decree-laws 59/93 and 60/93 of 3 March regulate the regime for the entry, stay and departure of foreigners who are nationals of non-Community and Community countries. Decree-law 59/93 is the most important for foreigners who are not citizens of a country of the Union. A foreigner is a person who does not possess Portuguese nationality; a resident is a person who possesses a valid permit for residence in Portugal.

156. Foreigners who wish to enter the national territory or to leave it must do so at the frontier posts qualified for this purpose. To enter or leave the national territory, foreigners must be bearers of a passport valid beyond the duration of their permitted stay; for entry, they must also have a valid visa; they must also be in possession of means of subsistence corresponding to the length of their stay in Portugal.

157. Foreigners whose names appear on a joint list (European Union) or a national list (drawn up by the Aliens and Frontiers Department) of persons who may not be admitted because they have been expelled from the country or given a custodial sentence of not less than one year, or who are strongly suspected of having committed a serious offence, or who are a threat to public order, national security or the international relations of a Member State of the European Union are forbidden from entering Portugal. The inclusion of a

foreigner on the joint list depends on a decision by the competent bodies of a Member State of the European Union.

158. Citizens who are not nationals of a Member State of the European Union who enter the country at a border post where there is no control, coming from another Member State, are required to declare their entry within three working days of their arrival. This declaration must be made to the Aliens and Frontiers Department, the Public Security Police, the National Republican Guard or the Fiscal Guard.

159. Shipping companies or airlines that carry a passenger or crew member whose entry is refused to the national territory must provide for their immediate return to the point at which the journey was commenced, or, if that is not possible, to the State where the travel document was issued, or to any other point where they may be admitted.

(c) Visas

160. Visas issued to foreigners are diplomatic, service or consular visas. Consular visas are for transit, work (for a relatively short duration; foreigners who wish to immigrate to work must apply for a residence visa and furnish proof of a contract of work or proposal of work, and of accommodation), short stay, study and stopover. Residence visas are always subject to prior consultation with the Aliens and Frontiers Department, and family reunion is a factor in favour of the issuing of a residence visa.

(d) Travel documents

161. The travel documents issued to foreigners are governed by decree-laws 438/88, of 29 November, and 267/89, of 18 August, and to refugees, by law 38/80 of 1 August.

(e) Residence permits

162. Application for residence permits must be made to the Aliens and Frontiers Department. An accommodation certificate must be filled in to permit control of the presence of foreigners in Portugal.

(f) Expulsion of foreigners

163. Foreigners may be expelled from the national territory. Under article 67, irregular entry or stay on the national territory, violation of national security, public order or public morals, the fact that presence or activity in the country is a threat to the interests or dignity of the Portuguese State or its nationals, abusive interference in the rights of political participation reserved for Portuguese citizens, infringement of Portuguese laws relating to foreigners, and engaging in acts that would have been an obstacle to entry into the country, are grounds for expulsion.

164. The penalty of expulsion is an accessory penalty to the penalty resulting from a penal conviction, but may not be automatically applied, it being unconstitutional to interpret the law in this sense. Legislation governing the entry, stay and departure of foreigners is applied in accordance with an interpretation that must be consistent with the Constitution. Expulsion is only

decided when the crime is associated with the legislation on foreigners (Constitutional Court decree 41/95, case 713/93, published in the Official Journal, 2nd series, No 98, of 27 April 1995).

165. The competent body for expulsion is the police court of the area of residence or the Aliens and Frontiers Department. The initiative for expulsion proceedings is taken by the Aliens and Frontiers Department, and the decision to drop the case can only be taken by the Ministry of the Interior. The period for the execution of the expulsion order is 40 days, it being executed by the Aliens and Frontiers Department. Foreigners may not be expelled to a place where they may be persecuted on grounds which, by law, justify the granting of the right of asylum. A foreigner expelled from Portugal is banned from re-entering the country for a period of not less than three years.

166. Foreigners who have entered illegally and who must therefore be returned to their countries of origin, foreigners who have been expelled, and foreigners who have applied for asylum must be installed in a temporary reception centre until the expulsion decision is executed or asylum is granted (art. 75).

167. Except in cases of asylum, this installation, referred to as installation for security reasons, is a measure executed by the judge. It lasts until expulsion or the granting of a residence visa or residence permit, may not exceed two months, and must be reassessed by the judge every week (art. 3 of law 34/94 of 14 September, temporary reception centres). The detention of foreigners in illegal situations may be done by any authority, the foreigners being handed over to the Aliens and Frontiers Department to be brought before a judge within 48 hours for the validation of their detention. The temporary reception centres, however, have not yet been created.

168. Although the law does not say so, it is to be presumed, in the case of detention, that foreigners enjoy all the rights deriving from detention under penal procedure, governed specifically by articles 254 et seq. of the Code on Penal Procedure. To this end, it must be presumed that foreigners may be detained at the moment of their illegal entry and brought before a judge within 48 hours. But if they are illegally on the national territory, having managed to enter without being detained, they can only be detained for expulsion proceedings on a judicial warrant.

169. The law also foresees, and punishes, support for illegal immigration.

2. Asylum and refugees

(a) The right of asylum

170. Law 70/93, of 29 December, governs the right of asylum. A reform of this legislation is currently under discussion in Parliament. The granting of the right of asylum confers the status of refugee on the beneficiary.

171. Under article 2, asylum is guaranteed to foreigners and stateless persons persecuted or seriously threatened with persecution on account of their activity in favour of democracy, social and national liberation, peace between peoples, freedom and the rights of the person, exercised in the State of their nationality or usual residence.

172. Foreigners and stateless persons who justly fear persecution on account of their nationality, race, religion, political convictions or membership of a certain social group, and cannot or do not want to return to the State of their nationality or usual residence, are also entitled to be granted asylum.

173. Those who have committed acts contrary to the fundamental interests or the sovereignty of Portugal, who have committed crimes against peace, war crimes, or crimes against humanity as they are defined in the international instruments intended to prevent them, who have committed acts contrary to the aims and principles of the United Nations, may not be granted asylum. Asylum may be refused whenever justified on the grounds of internal or external security or necessary for the protection of the population, in particular on account of the social or economic situation of the country.

174. The effects of asylum may be extended to the spouse and minor, single or incapable children of the beneficiary, or, if the latter is under eighteen years, to his father or mother.

175. The granting of asylum puts an end to any request for extradition of the asylum-seeker founded on the facts on the basis of which asylum has been granted. Application for asylum suspends any extradition proceedings until the definitive decision has been reached. The application for asylum is communicated, within two working days, to the instance before which the extradition proceedings are taking place.

176. Foreigners or stateless persons who enter the national territory irregularly, for the purpose of getting help, must submit an application immediately to the authorities, verbally or in writing. The authority to which the application is submitted must hear the applicant in a declaration proceeding, of which a record is taken that must contain the date, time and place of the record, and the circumstances relating to the irregular entry into the country and the reasons for it.

177. A residence permit outside the framework of law 59/93 of 3 March (humanitarian assistance) may be granted to foreigners and stateless persons not covered by the provisions of article 2 and who are prevented or feel it is impossible to return to the State of their nationality or residence for reasons of insecurity due to armed conflicts or systematic and verified violations of human rights.

178. The Minister of the Interior decides on applications for asylum on the proposal of the National Commissioner for Refugees. The process of granting asylum starts with a written or verbal application that must be submitted within eight days of entry into the country. The Aliens and Frontiers Department notifies the applicant that he must make a declaration, an act which marks the start of the procedure. Once the application for asylum has been received, the Aliens and Frontiers Department issues a provisional residence permit valid for a period of 60 days, that may be extended for periods of 30 days until the final decision is reached.

179. The right to asylum is lost through renunciation, acts of interference in Portuguese political life on the part of the beneficiary, proof that false grounds were invoked for the granting of asylum, or by the request by the

beneficiary for protection from the country of which he is a national. Loss of the right of asylum is a ground for expulsion from the territory of Portugal.

180. Expulsion of a beneficiary of asylum may not determine his return to a country where his life and freedom will be endangered for any reason that constitutes a ground for the granting of asylum.

181. The court of appeal in the area of residence of the beneficiary of asylum is competent to declare the loss of the right to asylum and to order the expulsion of the refugee. The decision may be appealed before the Supreme Court.

182. Until the final decision on asylum, petitioners in situations of economic and social need and their families receive assistance for accommodation and for food.

3. The right to freedom of thought, conscience and religion

(a) Constitutional provisions

183. Article 41 of the Constitution, which was not amended by the law of revision of the Constitution, reads as follows:

"Freedom of conscience, religion and worship

1. The freedom of conscience, religion and worship is inviolable.

2. No one shall be persecuted or deprived of rights or exempted from civil responsibilities or duties by reason of his or her convictions or religious observance.

3. No one shall be questioned by any authority about his or her convictions or religious practice, except for the purpose of gathering statistical information that does not identify individuals, nor shall anyone be prejudiced for his or her refusal to reply.

4. Churches and religious communities are independent of the State and are free to determine their own organization and to perform their own ceremonies and worship.

5. Freedom within a denomination to teach its religion and to use its own media for providing public information about its activities is guaranteed.

6. The right to be a conscientious objector is guaranteed by law".

The content of this article is the source of all the provisions of the Constitution as well as all the non-constitutional legislation dealing with religion.

184. Even if this article had not been in the Constitution, the Constitution is to be interpreted, by virtue of its article 16.2, in accordance with the Universal Declaration of Human Rights and would establish religious freedom in terms similar to those in article 41. Article 13, on non-discrimination,

imposes non-discrimination on account of religion. The suspension of civil and political rights, particularly in cases of a state of siege or emergency, may not apply to people's religion (art. 19.6). Computers may not be used to obtain information about religious faith (art. 35.3). It is also forbidden for the State to inculcate religious ideas (art. 43.2). Finally, as a guarantee of the State against the domination of one religion, the laws on the revision of the Constitution must respect the separation of the Churches and the State (art. 288, para. (c)).

185. But although the State is independent from the Church, the Church plays an important role in Portugal, where most believers are Catholics. The Concordat between the Holy See and Portugal is maintained, amended by the Additional Protocol of 15 February 1975.

(b) Concordat between the Holy See and Portugal

186. The Concordat between the Holy See and Portugal dates from 1940. The revolution of 25 April 1974 nevertheless changed it in some respects, introducing greater freedom, reflected at the level of relations between citizens. The Additional Protocol to the Concordat, signed at the Vatican City on 15 February 1975, modifies article XXIV of the Concordat to permit divorce (decree-law 187/75 of 4 April, Official Journal, 1st series, of 4 April 1975). The text reads as follows:

> "In celebrating Catholic marriage, the spouses thereby assume before the Church the obligation to respect the canon law by which it is governed and, in particular, to respect its essential properties.
>
> The Holy See, reaffirming the doctrine of the Catholic Church on the indissolubility of matrimony, reminds spouses that the celebration of canonical marriage determines for them the important duty that they should not avail themselves of the civil faculty of seeking divorce".

(c) Framework law on religious freedom

187. Religion is a possible source of discrimination, and religious discrimination is a frequent form of racial discrimination. We shall therefore go on to analyse the regime of religious freedom in Portugal. We shall then deal with conscientious objection and religious participation in education.

188. The framework law on religious freedom remains law 4/71 of 21 August. A new draft law is under study, however, but it has not yet been adopted by Parliament. The fundamental principles of this law are religious freedom and the granting by the State of adequate legal protection to religious denominations.

189. The State does not profess any religion and its relations with the religious denominations are based on the principle of separation, the denominations being entitled to equal treatment, except for differences imposed by their different representativity.

190. Religious freedom implies that citizens may or may not have a religion, may change denomination or leave the denomination to which they belonged, and may or may not act in accordance with the rules of the denomination to which

they belong. They may freely express their convictions, and defend in speech, writing, or by other means, the doctrine of the religion they profess. They may practise acts of worship, in private or in public, of their chosen denomination.

191. According to base IV, no one is obliged to state whether or not they have a religion, or what is their professed religion, except in reply to statistical surveys which are not compulsory and remain confidential. No one may be harassed, persecuted, deprived of a right or exempted from a duty on account of their religious convictions and there will be no discrimination in access to public functions or the award of honours or official dignities.

192. Base V establishes freedom of meeting for worship or other specific purposes of religious life. Religious associations are formed in accordance with the provisions of the Civil Code and registered in accordance with the terms of decree law 216/72 of 27 June.

193. Finally, an important issue is religious confidentiality. According to base XIX, ministers of any religion must maintain confidentiality regarding all facts communicated to them or which they have learned because of and in the course of their functions, and they may not be questioned by any authority.

194. Base XX provides for penal repression for breach of the duty of confidentiality. It may be wondered whether, in the light of the new Penal Code (art. 195), this provision will be maintained. The answer would appear to be found in article 195 of the new Penal Code: "Anyone who, without justification and without the consent of whoever is concerned, reveals or derives profit from a secret that has come to his knowledge by reason of his condition, occupation, employment, profession or technology, will be punished with a prison sentence of up to one year and a criminal fine of up to 240 days".

(d) Conscientious objection

195. Conscientious objection may also be a ground for racial discrimination, hence its importance. Law 7/92, of 12 May, contains the general regime for conscientious objection to military service. It has been regulated by decree-law 191/92 of 8 September. It must be said that conscientious objection strictly speaking is not confined to military service. A doctor who does not agree with abortion may invoke conscientious objection not to perform the act. But it is in the framework of the accomplishment of military service that conscientious objection is most obvious.

196. According to law 7/92, the status of conscientious objector determines exemption from military service in times of peace and times of war. It is personal convictions relating to the use of violent means that determine acquisition of the status of conscientious objector. These personal convictions are of a religious, moral or philosophical order and inhibit objectors from using these means even for the purposes of self defence.

197. The law provides for the service that will be carried out, its equivalence to military service and the abstract and concrete definition of the tasks to be carried out by those who perform civil service (art. 4). Apart form civil service, objectors may cooperate with the Portuguese-speaking countries, with the territories under Portuguese administration and in the framework of mobility within the European Community. Refusal or abandonment of civil service by

conscientious objectors leads to penal sanctions, the performance of civil service being considered to have been abandoned when the objector is absent, without justification, for five consecutive days or for a total of ten days from the place where the service is being carried out (art. 9).

198. The status of conscientious objector is acquired through an administrative procedure. The consequence of acquisition of the status of conscientious objector is to be unable, throughout life, to hold any public or private function that involves the use or carrying of arms, the arms trade or the manufacture of arms (art. 13).

199. The status is lost if an offence subject to penal sanctions is committed, or if a function is exercised by the objector that is prohibited under the terms of article 13 or in cases foreseen by the law (art. 14). Cessation renders objectors subject to normal military duties, with the time of effective service being counted for military service. Conscientious objectors are registered with the Conscientious Objectors' Civil Service Bureau. Decree-law 191/92, of 8 September, regulates the law on conscientious objection.

200. The organizational structure of civil service has no connection with military structures. Civil service must be composed of humanitarian, cultural and activities of social solidarity that are dignifying for those who perform them and useful to the community. The areas of civil service are: assistance in hospitals, diagnosis of diseases and actions for the defence of public health, actions of prophylaxis against drugs, tobacco and alcoholism, assistance to the handicapped, children and the elderly, prevention and control of fires and assistance to the shipwrecked, assistance to populations affected by floods, earthquakes, epidemics and other public disasters, assistance to the victims of road accidents, surveillance and maintenance of parks and national reserves, the maintenance and construction of highways and roads of local usefulness, protection of the environment and heritage, activities of civil statistics, literacy and cultural promotion, the exercise of activities in non-profit institutions of a social, cultural or religious nature, assistance in prisons and participation in activities of social reinsertion.

(e) Religious participation in education

201. Religious education is given in accordance with the free choice of learners in schools (law 47/86). The rule of decree 333/86, whereby teaching of the Catholic religion and morals was imposed on students who did not choose a specific course of religion or who did not produce a declaration of refusal of that teaching was ruled unconstitutional by decree 423/87 of the Constitutional Court, published on 26 November 1987 (on the teaching of religion, see also the commentary on article 7 in paragraphs 296 to 298 below).

202. Catholic education is therefore maintained, but is not compulsory for students who have not produced a declaration of refusal. Further to the decree of the Constitutional Court, those who wish to follow the discipline of Catholic religious and moral teaching must declare that they wish to do so.

203. These numerous references to religion in this report are justified by the fact that religious discrimination is sometimes at the root of more or less thinly disguised forms of racial discrimination.

4. The right of all persons, singly or in association, to property

204. Access to property could be refused on grounds of race, ethnic origin, or colour; it is therefore important that it should be guaranteed, specifically by a provision of the Constitution. This is done by article 62 of the Constitution, which stipulates:

"Right to private property"

"1. To all is guaranteed the right to private property and to transfer it during their lifetime and on death under the terms of the Constitution.

2. Requisitioning or compulsory acquisition of property for public purposes can be carried out only under the authority of law and on payment of fair compensation".

205. Under article 82 of the Constitution, there are three property sectors, the public sector, the private sector and the cooperative and social sector.

F. Economic, social and cultural rights

206. Portugal's third report on the application of the International Covenant on Economic, Social and Cultural Rights has just been submitted (E/1994/104/Add. 20 of 22 May 1998). Portugal refers to it for everything to do with these rights in general. They are applicable both to Portuguese nationals and to foreigners provided that the latter are in a regular situation on Portuguese territory. However, mention must be made here of certain specific rules that apply to foreign nationals and ethnic minorities.

1. Interdepartmental Commission for the Integration of Immigrants and Ethnic Minorities

207. The Interdepartmental Commission for the Integration of Immigrants and Ethnic Minorities created by resolution 38/93 of the Council of Ministers, of 15 May, was set up on 23 September 1993. It is composed of representatives of the Ministry for Qualification and Employment, the Ministry of Solidarity, the General Directorate of Health, the National Institute of Housing and the Aliens and Frontiers Department; it is coordinated by the representative of the General Directorate of Social Action of the Ministry of Solidarity.

208. The functions of the Commission are as follows: (a) to know the living conditions of immigrants and the measures taken by the different departments and institutions; (b) to determine the measures and strategies to be adopted by the sectors and departments working in the field of the immigrant population and ethnic minorities; (c) to devise and support programmes and actions aimed at social and occupational integration; (d) to coordinate and monitor the actions and programmes carried out with the populations; (e) to evaluate the actions and the results obtained.

2. Employment

209. In the field of employment, the relationship of subordinate labour, the provision of services, and the right of establishment are governed by Portuguese law provided that this is not incompatible with the provisions of the Treaty

instituting the European Community, in regard to freedom to accede to employment, to provide a service or to take up residence in Portugal.

210. There is no limitation on access to employment by foreign nationals, even in regard to access to work in the Administration, providing that the person in question only carries out technical functions there. Foreigners may not occupy managerial posts in the Administration (article 15.2 of the Constitution).

211. It should be added that revision of the law on foreign labour is under way, with a view to eliminating restrictions on recruitment, ensuring effective equality in conditions of work and combatting clandestine labour.

3. Housing

212. In the field of housing, article 15 of the Constitution establishes the principle of equality between non-nationals and nationals. Some of Portugal's immigrants live in slums; in Lisbon and Porto these are covered by the Special Rehousing Programme (PER) which aims to eliminate slums and replace them with adequate housing. In this measure, there is equality between immigrants and nationals: a foreigner in a regular situation in conditions in which the PER is applicable cannot be refused adequate housing to replace the precarious housing in which he is living.

213. In regard to social housing, legislative texts published on the initiative of the present Government have been designed to create conditions for more flexible and faster implementation of special rehousing programmes. This is the case of decree-law 79/96, of 20 June, better known as the PER-families, which has created the regime for the granting of aid for the purchase or recovery of homes covered by the PER in the metropolitan areas of Lisbon and Porto.

214. Apart from the possibilities which already exist for local communities to promote the building of the homes required or to proceed to the purchase of existing housing on the market, provided the purchase prices are within certain limits, the text of the law has established other possibilities. The granting of assistance with the cost of the housing to be purchased by the families needing rehousing has been accepted, which allows the families to choose the place and the home best suited for their rehousing, thus enabling their social reinsertion.

215. The practical significance of decree 357/96 of 16 August must stressed; this, with a view to creating conditions for more effective implementation of the PER, provides exceptionally that, in duly justified cases, the purchase of homes exceeding the limits and prices set for the different areas of the national territory may be authorized, in the metropolitan areas of Lisbon and Porto, taking into account the evolution of prices verified on the national market.

4. Health

216. In the field of health, base XXV of law 48/90 of 24 August, the framework law on health, provides that foreigners shall be beneficiaries, subject to reciprocity, of the National health service. Portugal has concluded reciprocal agreements with several countries with citizens resident in Portugal, in particular with the Portuguese-speaking countries of Africa.

217. The basic text on health policy is the above-mentioned framework law on health; it is divided into four chapters that define the bases of health: general provisions, entities providing care, the national health service and special health initiatives.

218. The protection of health is a right of citizens and the community that is realised through joint responsibility by citizens, society and the State, in terms of freedom to seek and provide care, in accordance with the Constitution and the law. The State guarantees access by all citizens to health care within the limits of the human, technical and financial resources available.

5. Guaranteed minimum income

219. For the first time in Portugal, law 19-A/96, of 29 June, on guaranteed minimum income, institutes a non-contributory regime of social security and a programme of social insertion that aims to provide individuals and their families with resources to help to satisfy their minimum needs and to promote their gradual social and occupational insertion. It must be said that, over and above the provision of varying amounts of money on a temporary basis, it is planned to have an insertion programme with a view to creating favourable conditions for the gradual social integration of recipients of benefits and members of their families. In the framework of insertion programmes, other support may be granted to recipients of the minimum income benefit and to other members of their families, in particular in regard to health, education, housing and transport.

220. Recipients of this benefit are persons legally residing in Portugal who meet the conditions established in the law, and not just Portuguese citizens, which is consistent with constitutional principles and with recognition of the social citizenship of foreign citizens and Portuguese citizens susceptible to regarded as part of a national ethnic minority.

6. Special measures for the integration of ethnic minorities

(a) The Interministerial Commission for the Reception and Insertion of the Timorese Community

221. Resolution 53/95 of the Council of Ministers, published in the Official Journal, 2nd series, of 7 December 1995, created the Interministerial Commission for the Reception and Insertion of the Timorese Community (see also paragraph 58 in Part I). This Commission has the functions of coordinating and assessing proposals for the development of integrated policies favourable to the reception and insertion of the East Timor community in Portugal. It is composed of representatives of the Ministries of Foreign Affairs, Internal Administration, Justice, Education, Health, Qualification and Employment, Solidarity and Social Security.

222. In this framework, efforts are made to distribute identity cards free of charge to citizens of East Timor, to provide them with adequate, if temporary, accommodation pending definitive housing and to employ citizens of East Timor in services dependent on the Administration, with a view to preparing them for study and for learning the Portuguese language.

(b) Gypsies

223. The Gypsies are an important group in Portugal (see paragraph 16 in Part I). For them, programmes to combat poverty and to ensure guaranteed minimum income, housing and employment have been set up (see also paragraphs 56 and 57 in Part I).

(i) Projects to combat poverty

224. In the framework of the National Programme Against Poverty, which covers all persons resident in Portugal and is directed by the Ministry of Solidarity and Social Security, projects have been set up which include the Gypsy population. Projects to combat poverty are located in places with sizeable groups of Gypsies, at Braga, Porto, Viseu, Santarém, Lisbon, Setubal/Almada, Evora, Beja, Faro, Olhão, Portimão, Neiva and Cávado. They are directed jointly by the services dependent on the Ministry of Solidarity and Social Security and by individual social solidarity institutions. The Evora project, for example, covers 2200 persons, the Beja project covers 12 Gypsy families with 72 persons; the other projects are not all quantified because they include other population groups at risk and other minority groups.

(ii) Pilot guaranteed minimum income projects

225. The pilot guaranteed minimum income projects executed throughout the national territory have not so far produced general statistics broken down by the ethnic origin of the beneficiaries. It can nevertheless be said that an important number of Gypsies are receiving the guaranteed minimum income in projects taking place in Bragança, Coimbra, Peniche, Lisbon (Carnide), Almada and Setubal.

226. It can also be said that the insertion programmes under way are being structured to take account of the social and cultural specificities of the groups to which the beneficiaries belong, which seems to indicate concern to find mechanisms conducive to the success of the insertion process.

(iii) Housing

227. With regard to housing, a set of new measures have been taken to respond more efficiently to the housing needs of the excluded populations, including the Gypsies. The cultural diversity of the populations covered by the rehousing operations is such that it has been necessary to provide for housing with a spatial layout differing from that of traditional housing so that the dwellings are adapted to the particular sociocultural characteristics of the families to be rehoused. It has therefore been necessary to introduce flexibility into the legal mechanisms in force, permitting a specific approach to the needs of the populations to be rehoused, particularly in regard to the technical standards of social housing.

228. In June 1996, decree-law 73/96 made it possible to take account, in the building of housing at controlled costs in the framework of public rehousing programmes, of all the situations where the particular customs of populations require different designs of housing. This text has therefore made it possible to resolve the serious problem of rehousing groups with their own sociocultural lifestyles, with specific habits in regard to the use of space, as in the case

of Gypsy families, for whom it is difficult to adapt the standards and designs foreseen for different social realities.

(iv) Employment

229. In the framework of the activities of the Ministry for Qualification and Employment, and through the Institute for Employment and Vocational Training (IEFP), various projects are making a positive contribution to the insertion of Gypsies and other citizens.

230. From June 1996 to 31 December 1997 the project on "Socioeconomic integration of young Gypsies" was carried out as part of a global plan of action defined in the framework of the cooperation agreement signed between the Santa Casa da Misericórdia in Lisbon (a private social solidarity institution) and the IEFP. With a total cost of 147 326 334 escudos, this project was carried out in the Lisbon region (Charneca do Lumiar and Buraca) and concerned about 200 people. The acquisition of social and vocational skills was made possible by actions of pre-vocational preparation, vocational training in the metal-working, garment, furniture-making and catering sectors, and socioeducational training comprising regular teaching, social and human training, psychopedagogical intervention and physical education.

231. A project for the disadvantaged submitted by the Lisbon Diocesan Secretariat of the National Department for the Pastoral Care of Gypsies is under way in the framework of the European Community initiative "Employment - Horizons". This project, which is addressed to the Gypsy and non-Gypsy population is being executed in the run-down neighbourhoods of Lisbon and Loures; it aims to carry out two vocational training courses (garment, pastry-making and Gypsy mediators/facilitators) for a total of 25 Gypsies. It includes the constitution of a data bank with facts relating to the realities of Gypsy life in Europe.

232. The Diocesan Secretariat of the Department for the Pastoral Care of Gypsies also has five centres functioning permanently in the "freguesias" (parishes) (smallest local community administrative unit in Portugal) of Alto Pina, Carnide and Santa Maria dos Olivais in Lisbon, Buraca in Amadora and Moscavide in Loures. In all these centres there is a reception, information and case referral service, and domiciliary visits. These centres are also attended by 420 nursery school children, of whom 250 are Gypsies.

233. An application has been made to the regional social security delegation of Lisbon and the Tagus Valley in the framework of measure 4 of the sub-programme INTEGRAR, by the Association Oficina Romani, to carry out actions of special vocational training for 30 Gypsies in 1997. This project provides for vocational training in the areas of furniture-making, guitar-making and garment-making, complemented by school education and various cultural activities.

(v) Gypsy mediators

234. A good practice of a semi-public nature, since it receives substantial funds from the Government, is the training of Gypsy mediators in the framework of the Programme for the Social Promotion of Gypsies of the Santa Casa da Misericórdia. These mediators have the task (training of the first was completed in 1994) of ensuring liaison between the Gypsy community and public

and private institutions, identifying the needs of the community and indicating the path to be taken to meet their needs for employment, education, housing, etc. (see commentary relating to article 7 on the education of Gypsies in paragraphs 299 to 313 below).

## Article 6

### A. Functioning of the judicial system

#### 1. Access to justice

235. With regard to the dissemination and knowledge of the law, there are compendia of legislation and jurisprudence in existence as well as data bases. Fuller information on this subject will be found below.

##### (a) Legislation

236. This is regularly published in the Official Journal; it is also available in the data base "Digesto", created under the auspices of the presidency of the Council of Ministers. The national press organ, Casa da Moeda, which publishes the Official Journal, also has a home page on the Internet where numbers of the Official Journal published since 1970 can be consulted. There are also some private bases of legislation.

##### (b) Jurisprudence

237. This is published in the Bulletin of the Ministry of Justice, the most widely circulated legal journal, which frequently contains texts of doctrine and commentaries on jurisprudence useful for most thorough knowledge of the different areas of law. This Bulletin contains a selection of the law decisions of the Supreme Court of Justice (penal, private) and the courts of second instance. The Magistrates' Association's Handbook of jurisprudence of the courts of second instance is also important.

238. Jurisprudence is also accessible in data bases. The data bases of the Ministry of Justice have recently been put on the Internet (http://www.dgsi.pt). They contain the jurisprudence of the Constitutional Court, the supreme courts (of justice and administrative), the courts of second instance and an option permitting searches to made in the whole universe of judicial decisions at once. This server also disseminates community law (CELEX base in Portuguese), also on the Internet.

##### (c) Public services

239. The public services in general act to publicize the law. Brochures are published on access to legal information and justice in the framework of INFOCID - the citizens' information system on justice - and information is placed on the Internet. There is the Government home page (http://www.pcm.gov.pt), the Internet pages of the Public Administration (http://www.infocid.pt/pgesearch.html), pages of legislation of the Ministry of Justice (http://www.min-jus.pt), the page of the Office of the Procurator-General of the Republic (http://www.pgr.pt) and the page of the Bureau of Documentation and Comparative Law (http://www.gddc.pt) which also contains pages on the civil law (http://cr3.cea.ucp.pt/leiciv) and penal law (http://cr3.cea.ucp.pt/lei/lista.html) in force.

2. Renewal of the judicial infrastructure

240. Renewal of the judicial infrastructure is an important condition of access to justice. In 1994, 67 contracts were signed, for 3 palaces of justice, 1 court, 19 registry centres and notaries' offices, 11 major works of alteration, enlargement and renovation, and 33 works of conservation in the courts and other judicial institutions.

241. In 1995-1996, the figures were 6 palaces of justice, 3 courts, 5 registry centres and notaries' offices, 9 major works of alteration, enlargement and renovation, and 31 works of conservation in courts and other judicial institutions. There is a constant concern to bring citizens closer to justice, both by improving the services of justice offered and by improving the access of citizens to justice, as evidenced by the existence of the 11 offices mentioned several times above (paragraphs 28, 73 and 74 and 115).

242. For several years, there has also been a policy of creating new courts whenever the need for them is felt. Thus, courts of first instance have recently been created at Cantanhede, Covilhã, Esposende, Estarreja, Fafe, Felgueiras, Maia, Marco de Canaveses, Matosinhos, Montemor-o-Novo, Montijo, Ponte de Lima, Rio Maior, Setubal, Sintra and Viana do Castelo. In the matter of administrative justice, it must be stressed that the Central Administrative Court, that will also function as a court of second instance, has also been created, together with two business receivership and bankruptcy courts, in Lisbon and Vila Nova de Gaia.

243. It is planned to install the courts already created in Lisbon (one chamber of the family and minors' court, the ninth chamber of the court of minor civil jurisdiction), Coimbra (the fifth chamber of the court of minor civil jurisdiction), Marinha Grande (the third chamber of the court of major jurisdiction), Olhão da Restauração (third chamber of the court of major jurisdiction), Peniche (second chamber of the court of major jurisdiction), São João da Madeira (fourth chamber of the court of major jurisdiction). This policy of the creation of new judicial facilities will be continued in the future, to bring justice closer to citizens.

B. Independence and impartiality of the judicial power

1. Courts

244. The courts are independent institutions, forming the judicial power in parallel with Parliament (legislative power) and the Government (executive power). They are governed by articles 202, 203, 209, 221 and 277 et seq. of the Constitution. Thus, the Constitution provides for the existence of the Constitutional Court, responsible for the administration of justice in matters of a legal and constitutional nature (art. 221 et seq., art. 277 et seq.), the Supreme Court of Justice, at the top of the judicial organization formed by the courts of first instance and the courts of second instance, competent in civil, social and criminal matters; the Supreme Administrative Court, at the top of the system of administrative justice formed by the Central Administrative Court (second instance), the district administrative courts (first instance), the tax courts of first instance, the customs and fiscal courts, the administrative court of Macao, the tax court of second instance (art. 209 of the Constitution and 2 of decree-law 129/84 of 27 April), the Court of Audit, the military

courts, the maritime courts (art. 209 to 214 of the Constitution). The courts are organs of sovereignty with competence to administer justice (art. 202 of the Constitution). They are independent and they are subject only to the law. Their decisions are binding on all public and private entities and take precedence over the decisions of all other authorities (art. 205 of the Constitution).

2. Career and status of judges

(a) Appointment

245. Judges are appointed by the Supreme Council of Justice after they have attended a three-year course at the Centre for Judicial Studies (National School of Magistrates). The minimum age for admission to this course at the National School of Magistrates is 23 years and entrants must be under 35 years. The course is divided into a period of theory and practice, an initiation course and a pre-assignment course. The option of becoming a magistrate (judiciary or Public Ministry) follows the first phase which lasts ten months. The initiation course also lasts ten months. The pre-assignment course lasts six months. After this last course, the trainees are required to become effective. They must remain in service as magistrates for a minimum period of five years.

246. The Supreme Council of Justice is the highest organ of management and discipline of the judiciary magistrates. It is its task to appoint, post, promote, exonerate and exercise disciplinary action in regard to the magistrates, to propose legislative measures to the Ministry of Justice to improve efficiency and improve judicial institutions, and order inspections and inquiries into the judicial services. The Council is presided by President of the Supreme Court and its members comprise a group of two elements designated by the President of the Republic, one being a magistrate, seven members elected by Parliament and seven judges elected by their peers.

247. The magistrates have duties of exemption, impartiality and probity. They cannot be arrested or detained without affirmation of fault by a court, except in cases of flagrante delicto punishable with a prison sentence of more than three years. In case of detention, a magistrate is immediately brought before the competent judge. Preventive prison sentences and sentences depriving magistrates of liberty are served in a prison establishment in which they are separated from other prisoners. When a search is necessary at the residence of a judiciary magistrate, it is overseen - on pain of nullity - by the competent judge who immediately alerts the Supreme Council of Justice to ensure that a member delegated by the Council is present.

248. In any other situation, magistrates may only be made responsible by means of a disciplinary procedure conducted by the Supreme Council of Justice. They do not generally have civil responsibility, except when they are convicted of crimes of corruption, in cases of fraud, when the law expressly imposes this responsibility on them, or when they commit a denial of justice. A criminal procedure may be combined with civil responsibility in cases of denial of justice.

(b) Studies and legal training

249. After their first degree (five years), judges follow the courses at the National School of Magistrates (three years); they are then junior magistrates. In the first year they follow a period of theory and practice. The phase of activities of theory and practice begins on the first of October after the competitive entrance examinations and ends ten months later. Subjects such as legal methodology, judicial psychology, judicial sociology and languages are compulsory. Professional and applied subjects are also compulsory: these include analysis of jurisprudence, criminology, criminalistics and penology, forensic medicine and psychiatry, and judicial technology. Finally, the activities of theory and practice include formative and special subjects, such as systems of comparative law, judicial organization and business sciences.

250. After this period, the junior magistrates are graded (inadequate, adequate, good; the first being excluded) and must choose between joining the judiciary or the prosecution service within ten days of publication of the results. The following year, again for ten months, there is an initiation course which takes place in the judicial courts under the direction of a judge or a prosecutor, depending on the option selected by the candidates. They participate in the making of decisions without being responsible. At the end of these ten months, there is a further grading similar to that described above. There then follows a pre-assignment course lasting six months during which the trainees reach decisions on their own responsibility, but with the help of a confirmed magistrate. After this course, the magistrates are placed on effective duty.

251. In addition to the initial training of judges, the National School of Magistrates is responsible for the continuing training of magistrates. It therefore organizes seminars on the European Convention on Human Rights, community law, new codes recently published, etc. It must be added that magistrates receive free of charge the Official Journal and the Bulletin of the Ministry of Justice, to enable them to know the law and jurisprudence. They also have free access to the data bases of the Ministry of Justice and can receive computer training in order to access them. Finally, they can take part in the courses of continuing training organized by the National School of Magistrates.

(c) Remuneration

252. The remuneration of judges is established so as to guarantee their independence and the constitutional dignity of their function, in relation to other levels of remuneration in the public administration. Judges must reside in the constituency of the seat of the court where they carry out their functions. They have the right to their own residence or to a subsidy for a residence in the judicial constituency in which they work. They may not, in principle, be absent from the judicial constituency where they work during the exercise of their functions. They may be absent, however, when they have a licence to that end, on judicial holidays and Saturdays, Sundays and public holidays. They must, however, leave directions as to where they can be found. An illegitimate absence entails a loss of salary and the disciplinary responsibility of the magistrate.

253. Magistrates have certain special rights: to a confidential telephone, to access to data banks as mentioned above, to surveillance for personal security, the right to carry arms, the right to have legal expenses waived in any case in which the judge is the principal party or an accessory on account of the exercise of his functions. In regard to conditions of work, important efforts have been made to ensure that they are continuously improved. This is the case for information, the creation of better working conditions (going as far as providing greater comfort to magistrates and staff with modern office design and better equipment), and the reorganization of clerks' offices.

3. Auxiliary justice personnel

254. In addition to the judges and the prosecutors, there are auxiliary justice personnel. They are trained at the Centre for Justice Officials, which prepares them for life in the courts. There are 7 384 such staff who figure under the heading of "Personnel of the General Directorate of Judicial Services" in the statistics relating to justice. Officials of other services of justice are not counted, such as those of the General Directorate of Registration and Notarial Services, the Judicial Police (which has 2 183), the Institute for Social Reinsertion, etc.

## C. Non-interference

1. Independence

255. Judges are independent; there is no possibility of pressure on magistrates. They are irremovable, and they may not be held responsible for their decisions. Thus, magistrates cannot be arrested or detained without an interim accusation order (pronúncia) except in cases of flagrante delicto for a crime punishable by a prison sentence of more than three years. This should be seen as a guarantee of independence.

256. Moreover, the organizational law on judicial courts (law 38/87 of 23 December, amended by laws 49/88 of 19 April, 52/88 of 4 May, 24/90 of 4 August and 24/92 of 20 August) affirms that the judicial courts are sovereign organs charged with the administration of justice on behalf of the people. Article 3 establishes that the courts are subject only to the law, their independence being guaranteed by a judicial organ of management and discipline, the Supreme Council of Justice, by the irremovability of judges and their refusal to submit to orders or instructions other than the execution of the decisions being appealed. The same regime applies to the administrative and fiscal courts, whose status figures in decree-law 129/84 of 27 April and the law on procedure in decree-law 267/85, of 16 July.

257. The magistracy decides on the questions brought before it in an impartial manner, on the basis of facts and in accordance with the law, without any restriction. Judicial decisions are binding and take precedence over any other decision. The courts have jurisdiction over any question of a judicial nature and have exclusive authority to decide whether a case is within the domain of their competence. Moreover, there is no unauthorized or inadequate interference in judicial process, since the decisions of the courts cannot be reviewed by non-judicial entities. Finally, all have the right to be judged by the common courts or by courts employing legally established procedures. Courts which do not employ the procedures established in the laws on legal proceedings

cannot be created to displace the jurisdiction of the ordinary courts or the judicial courts. All these principles are enshrined in the organizational law on judicial courts.

258. In regard to the Public Ministry, there is also partial independence, in terms of autonomy, vis-à-vis the Government. The laws that govern it are law 47/86 of 15 October, and law 23/92 of 20 August (see the paragraphs below).

259. The Office of the Procurator-General of the Republic is presided by the Procurator-General of the Republic who, with the Supreme Council of the Public Ministry, directs the prosecution magistrates. The Procurator-General represents the Public Ministry in the higher courts, directs the activity of the Public Ministry, convenes and presides over the Consultative Council of the Office of the Procurator-General and convenes and presides over the Supreme Council of the Public Ministry, the supreme organ of self-government of this magistracy, which exercises powers of fiscalization and control over the magistrates of the Public Ministry. The competences of the Office of the Procurator-General of the Republic include higher inspection of the activity of the different organs of the criminal police.

260. The magistracy of the Public Ministry is parallel to the judicial magistracy and independent from it. The magistrates of the Public Ministry are responsible and hierarchically subordinated. Responsibility consists in answering in terms of the law for the exercise of their duties and the execution of the directives, orders and instructions they receive. The hierarchy consists in the subordination of the lower grade of magistrates to those of the higher grade.

## D. Impartiality

261. The guarantees of the courts' impartiality are contained in the provisions that permit affirmation of their independence. Thus, under the organizational law on judicial courts, it is for the judicial courts to ensure the defence of the rights and interests legally protected, to repress violation of democratic legality and to resolve conflicts of public and private interests (art. 2). This is done in full independence (art. 3) by the courts, all parties having access to justice, and such access may not be denied on the grounds of insufficient economic means (art. 4). Finally, an important guarantee of impartiality, hearings in the judicial courts are normally public (art. 7), unless the court, faced with particular circumstances, decides otherwise.

### 1. Conflicts of interests

262. If there is a conflict of interests, the magistrate must ask to be taken off the case. If he does do so, any party may so request up to the sentence. The law (new Code of Civil Procedure, art. 122 to 136) distinguishes between impediments, which prevent a judge from exercising his functions in contentious or voluntary jurisdiction (for example, the judge is a party to the case) and suspicions, which constitute doubt - or the possibility of doubt - concerning the justice of the decision (for example, the judge is related to one of the parties to the case). In the first case, the judge declares there is an impediment, while in the second case, he cannot do so but may ask to relinquish the case. This may also be requested by the parties.

2. Activities of a political nature

263. Judges may not exercise any political activity; paragraph 1 of article 11 of the Judicial Magistrates' Statute (law 21/85 of 30 July, law 2/90 of 20 January, law 10/94 of 5 May) provides that magistrates may not exercise political or partisan activities of a public nature. Judges may nevertheless form and join associations of judges or other organizations intended to represent their interests, promote their professional preparation and protect their judicial independence. The Bench Association is the association that represents them.

E. The effectiveness of channels of judicial remedy

1. Procedure

264. The usual procedure in civil proceedings is the ordinary lawsuit which may be one of declaration or of execution. An ordinary lawsuit takes place when the value attached to the case exceeds the amount determined to permit intervention by the Appeal Court (Relaçao), which is 2 000 000 escudos. When the value only falls within the competence of the first instance, 500 000 escudos, there can be no appeal to the court of second instance.

265. In penal procedure, the criterion that determines ordinary procedure (common procedure) is the length of the prison sentence applicable in theory for the crime. If the sentence is equal to or more than three years, the procedure followed is the ordinary procedure; otherwise, it is the summary or simplified procedure.

266. Appeals are not in fact but in law. In civil procedure, judgement in fact precedes judgement in law and there is no appeal in fact, but simply a claim made to the court which decides, if it can, on the spot, in accordance with the provisions of article 653 of the new Code of Civil Procedure.

267. In penal procedure, an appeal in fact is accepted when the decision in the first instance is unintelligible or incomprehensible, under article 410 of the Code of Penal Procedure. This corresponds to a double degree of jurisdiction in fact in so far as since article 410 of the CPP covers situations of judicial error, it finally covers all the cases in which an appeal in fact might become necessary.

268. The constitutional appeal that concerns procedure in a court is an appeal for specific control of constitutionality, since a direct constitutional appeal founded on the violation of fundamental rights does not exist. An appeal for specific control of constitutionality is obligatory for the Public Ministry and takes place whenever the allegation that a norm is unconstitutional has been made by a party to the proceedings or by the judge, who, if necessary, may not apply the norm he considers to be unconstitutional. If the Constitutional Court decides that the norm is unconstitutional, it is considered null in the context of the case, but remains valid for other situations. However, the third time it is decided that the same norm is unconstitutional, in the third case in which an appeal is made, the norm is declared unconstitutional with general binding application.

2. Equitable judgement

269. Procedure before the Portuguese courts is considered to be equitable. In practice, anyone who has a right for his case to heard by a court has access to a court, the court being independent, impartial, established by law and competent to decide. In regard to the fairness of the court, each of the parties may state their case in conditions that do not put them at a substantial disadvantage, throughout the proceedings, in relation to the adverse party. Thus, the rights of the defence are respected and there is equality of arms and contradictory debate.

270. It is important to mention certain questions and the way in which they have been resolved to demonstrate the equity of the procedure. The right of oversight by the Public Ministry in appeals is strongly challenged by lawyers. This is because the Public Ministry may respond to the appeal made before a court and thus upset the balance of procedure. The Constitutional Court nevertheless considers that there is no unconstitutionality when the party which has brought the appeal is able to respond to the formulation of its position by the Public Ministry in cases where it has evoked a new argument or a rebuttal of the appeal on the part of the Public Ministry.

271. The order introducing the judgement before a court (pronúncia) has not been regarded by the European Court of Human Rights (Saraiva de Carvalho case) as a situation involving the same judge when the judge intervenes in the interim decision and in the decision on substance.

272. The Constitutional Court considers that the Code of Penal Procedure of 1987 guarantees the double degree of jurisdiction in regard to the facts: indeed, article 410, foreseeing the unintelligibility of the decision that is being appealed, covers practically all the cases in which a new judgement of facts is needed, so as to avoid a possible judicial error.

273. In regard to the length of the procedure, there is not yet any means foreseen to accelerate civil proceedings, but the possibility exists in penal procedure of requesting extraordinary acceleration of the procedure under articles 108 and 109 of the Code of Penal Procedure.

3. Judicial control of the deprivation of liberty

274. Judicial control of the deprivation of liberty is assured, since application for *habeas corpus* obliges judges to take cognizance of cases within forty-eight hours. This is the case for detention by the police authorities. Preventive detention, foreseen in article 202 of the Code of Penal Procedure, is decided by a judge in the light of the circumstances of the case.

275. Preventive detention cannot be applied when, specifically, there is no flight or danger of flight, no risk of interference with the course of the inquiry or preparation of the trial, specifically in regard to proof; no danger, on account of the circumstances of the crime or the personality of the accused, of a disturbance of public order and peace or the continuation of criminal activity.

276. Although the application of preventive detention is not obligatory for crimes subject to a maximum penalty of more than eight years' imprisonment, if

it is not applied by the judge, he must give an account of the reasons that have led him not to apply preventive detention in that particular case (art. 209).

277. Preventive detention is subject to maximum periods of application. The accused must be released if charges are not formulated within six months; if, in the eight months of pre-trial proceedings, there has been no investigation decision; if, within eighteen months, there has been no conviction in a court of first instance; and if there has been no decision with force of res judicata within two years. Under article 213 of the Code of Penal Procedure, the judge proceeds every three months to review the continued existence of grounds for detention, deciding whether it should be maintained or whether it should be replaced or revoked.

4. Reasonable delay

278. Most of the complaints against Portugal brought to the Commission and the European Court of Human Rights have to do with a reasonable delay. Measures have been taken, however, to combat this problem, notably in civil procedure, through the adoption of a new Code of Civil Procedure.

279. At the same time, there has for many years been a policy of selection and continuing training of new magistrates. Thus the number of judges has risen from a small group in 1974 to 1 213 today and 939 prosecutors.

280. The number of legal actions has also increased significantly since 1974. The number of cases under way fell between 1994 and 1996 and the number of cases concluded also fell. In 1990, the courts heard 1 277 049 cases, of which 594 103 were concluded. In 1991, 1 351 135 cases, of which 709 781 were concluded. In 1992, 1 555 814 cases, of which 792 612 were concluded.

281. 1994 was an important year. The volume of cases was highest - 1 620 752 - as was the volume of cases concluded - 961 427. 1995 and 1996 had less movement, with respectively 1 282 921 cases and 523 324 cases concluded, and 1 430 088 cases and 545 046 cases concluded. These figures show the extent of the movement in the judicial courts and the fact that nearly half the volume of legal actions each year are finished cases.

5. Execution of decisions of justice

282. The decisions of civil, penal and administrative justice are generally respected. They are reasoned and binding for all public and private entities and take precedence over the decisions of any other authority. Penal decisions are executed once they have acquired force of res judicata. In civil matters, where there is no enforceable title, the sentence not being one, it is necessary, following the procedure of sentence to payment, to start enforcement proceedings. This is done if the sentence is not carried out by the defendant.

283. When the official responsible for the enforcement of a penalty does not collaborate, there is the crime of disobedience, assistance by the official in evasion (art. 350 of the Penal Code), or negligence on guard (art. 351 of the Penal Code). There may also be refusal to cooperate (art. 381 of the Penal Code). All these situations determine adequate punishment.

## F. Role and status of prosecutors

284. The Public Ministry is the organ of the State responsible, under law 47/86, for representing the State, exercising penal action, defending democratic legality, and the interests for which it is responsible. The Public Ministry is autonomous in relation to the organs of power, while being bound by its duty of respect for the criteria of legality and objectivity and by the exclusive subjection of magistrates and agents of the Public Ministry to the directives, orders and instructions foreseen by the law (see paragraphs 258 to 260 above).

285. Relations with the Ministry of Justice are, in civil matters, to represent the State as a simple party that gives its instructions to the Public Ministry in the same way as a private party would to his lawyer. In penal matters, the Public Ministry acts ex officio without being subject to the directives of the Government.

286. The Public Ministry is represented in the judicial courts by the Procurator-General of the Republic in the supreme courts, deputy procurators-general in the courts of second instance, procurators of the Republic and delegates of procurators of the Republic in the courts of first instance.

287. The Office of the Procurator-General of the Republic is the supreme organ of the Public Ministry: it comprises the Procurator-General of the Republic, the Supreme Council of the Public Ministry, the Consultative Council of the Office of the Procurator-General of the Republic, junior magistrates and the registry of the Office of the Procurator-General of the Republic.

288. The Supreme Council of the Public Ministry exercises functions of discipline and management of the officials of the Public Ministry and the justice officials of the Public Ministry. It is composed of the Procurator-General of the Republic, the deputy procurators-general in the courts of second instance, a deputy procurator-general who has no relation with the courts of second instance, two procurators of the Republic elected by the procurators of the Republic, four delegates of the procurator of the Republic elected by the magistrates of their rank and three persons of recognized merit designated by the Ministry of Justice.

289. The Consultative Council gives opinions on the legality of any act for which its opinion is obligatory, at the request of the Government in regard to drafts of legislative texts, on the legality of contracts in which the Government is interested, and on any other legal question submitted to it for appreciation. It has functions similar to those of the French Council of State.

290. The junior magistrates are representatives of the Public Ministry with the rank of deputy procurator-general in all the directing departments of the central Administration. They have consultative functions in these departments.

291. The Bureau of Documentation and Comparative Law of the Office of the Procurator-General of the Republic completes the picture. It is dependent on the Procurator-General of the Republic and is directed by a deputy procurator-general; it must furnish all the information requested of it, in particular by prosecuting counsel and judges, on international, foreign and community law. It also has human rights functions: it is the office that coordinates, among other

activities, the preparation of reports on the different conventions of the United Nations submitted by the Portuguese Government to the various organs of control established by them. It also ensures continuous dissemination of information on the protection of human rights, both at the national and international levels.

## Article 7

### A. General provisions

292. The Constitution recognizes that education must help to do away with economic, social and cultural inequalities, enable citizens to participate democratically in a free society and promote mutual understanding, tolerance and a spirit of solidarity (art. 74, para. 2). The basic text also recognizes that everyone has a right to education, with equality of opportunities for access to school and success in education (para. 1). This naturally means that all groups of the population will have the same possibilities, no difference in their treatment being permitted. It is also an imperative in the field of education of the Convention on the Elimination of Discrimination ratified by Portugal.

293. According to the framework law on the educational system (law 46/86 of 14 October), education aims to promote the development of a democratic and pluralist spirit, respectful of others and their ideas, open to dialogue and the free exchange of opinions with a view to forming citizens capable of judging their social environment in a critical and creative spirit and engaging in its gradual transformation (art. 2, para. 5). This takes place in the framework of the European universalist tradition and of the growing interdependence and solidarity needed between all the peoples of the world.

294. In this spirit, a programme entitled "Education for all" was created in 1991 (resolution No 29/91 of the Council of Ministers). The main objectives are as follows:

(a) To promote attitudes of solidarity and cooperation between all agents involved in education, particularly at the community level;

(b) To promote the adoption of measures of intervention to promote the success of pupils with special needs in education, in particular those belonging to ethnic and linguistic minorities;

(c) To promote the adaptation of education to social, economic, cultural and environmental reality.

295. In the framework of the promotion of foreign cultures in the Portuguese school system, mention must be made of the adoption of the statute relating to foreign assistants in official primary and secondary schools (decree-law 8/91, of 8 January). Foreign assistants are agents for the dissemination of their language and cultural cooperation with Portuguese teaching establishments.

296. In regard to the teaching of religion (see the comment on article 5, under the heading "Religious participation in education" in paragraphs 201 to 203 above, within the educational system, attention must be drawn to regulatory decree 104/89, of 16 November. In accordance with article 41, paragraph 5 of the Constitution guaranteeing freedom to teach all religions practised in the

framework of their respective denominations, this regulatory decree aims to ensure that the different religious denominations enjoy equality of opportunity to teach the fundamental principles of their religion during pupils' study time. For it to function an application must be made by the competent authority, mandated by the religious denomination, provided that a minimum of 15 pupils in each school have requested the creation of such a class at the time of their enrolment.

297. Under decree-law 286/89, of 29 August, which develops law 46/86, of 14 October, education is divided into primary education and secondary education. Primary education is divided into three cycles, the first lasting one year and containing the possibility of religious education, the second lasting two years and containing the same possibility, for one hour per week, and the third lasting two years and containing the same possibility, for one hour per week. Secondary education lasts for three years and provides for one hour per week of religious education.

298. As an alternative to religious education, pupils may opt for courses in civic education where there is strong contact with human rights, which naturally include education for non-discrimination.

### B. The education of Gypsies

299. In the set of measures to ensure better conditions of access to education for the disadvantaged, special attention has been paid to Gypsy children (see the comment on article 5 concerning Gypsy mediators in paragraph 234 above).

300. These measures must overcome the increased difficulties due to the nomadic life of these populations, by definition not very inclined to a fixed abode. Special reception, especially in primary schools, has therefore been foreseen for these children, so that they can be accepted in classes and the teachers trained to give them support in their learning. In practice the younger children attend school regularly, unlike the older children. There are few Gypsies in higher education. The awareness plan introduced by the Ministry of Education, especially in primary education, is a decisive step towards the enrolment of this population in school. It is hoped that Gypsy families will follow the school education of their children in a responsible manner.

301. The Ministry of Education collaborates with the social solidarity institutions (such as the Misericórdias). The authorities follow closely the resolution of the Council of Ministers of Education of the European Community, which, in May 1994, suggested the adoption of several measures on the schooling of Gypsy children. These include measures relating to the reception of these children in schools, support to teachers and Gypsy families, and study of their history and culture.

302. Resolution 175/96 of the Council of Ministers, of 19 October, created the Working Group on the Equality and Insertion of the Gypsies, under the authority of the High Commissioner for Immigration and Ethnic Minorities. This working group has already published a report (see Part I, paras. 56 and 57) in which it advocates a certain number of actions that are under way, including educational measures. Thus, a teacher's guide has been established (in which the whole curriculum is reviewed taking account of Gypsy culture, and suggestions are given for activities with children of other cultures), translations have been

made of several works on the schooling of Gypsy children, on tolerance and on human rights, and some intercultural education projects have been set up.

303. The Working Group has functioned in close connection with the Secretariat for the coordination of programmes of multicultural education. The Teacher's Guide (for 1995) is the work of that Secretariat. In the year 1996/1997 - 1997 being the European Year Against Racism - the Secretariat published play and learning materials inspired by Gypsy culture.

304. The work "Approaches and Perspectives" on multicultural education, published by the Secretariat, identifies models and lines of research developed in the United States of America and in Europe among which there are studies on the schooling of Gypsies.

305. The Secretariat has translated and published a UNESCO manual "Tolerance, the threshold of peace". It has supported the publication by l'Oeuvre des Tziganes of a new edition of the book by J. P. Liégeois on the Gypsy people (1995). One hundred copies of the book "The Schooling of the Children of Gypsies and Travellers", by the same author, have been purchased. The Secretariat has also translated, published and distributed the UNESCO human rights calendar and the "Human Rights Album" of the Council of Europe.

306. In parallel, the intercultural education project is developing and it should be noted that among the 52 schools that are at present involved, 14 have a significant percentage of pupils of Gypsy origin; some of these schools were chosen at the outset precisely for this reason (for example, the school at Matosinhos). These 52 schools all have intercultural education projects that have specific activities for Gypsy pupils, including in particular the provision of meals, participation in leisure activities and the development of initiatives and strategies for the motivation and involvement of Gypsy families and communities (for example, lessons in the camps, sessions of Gypsy singing and dancing, collection of Gypsy history and legends).

307. Another action has been the training of the 200 teachers participating in the project on the use of the "Teacher's Guide". In the field of action directly related to schools, there is nutritional, social and pedagogic support to schools with a significant number of Gypsy children (55 and 167 schools in Lisbon, schools in Beja, Elvas, Nisa, Moura, Penafiel, etc.) and the distribution of books and publications to schools.

308. The Secretariat's "Inter-cultures" data bank, which is addressed to all groups of children and not just Gypsy children, and is continuously updated, nevertheless shows that in spite of the efforts undertaken, the rates of failure and dropout of Gypsy children are very high, even in comparison with other ethnic groups.

309. Apart from the Secretariat's activity, but still in relation to the activities of the Working Group on Gypsies, there is a link with the Department of Primary Education of the Ministry of Education. Through this, the project "Going to school" has been developed; this has so far trained six young Gypsies who have been placed in schools with a high percentage of Gypsy pupils where they become facilitators with the Gipsy communities, awakening parents to the need to send their children to school and helping them - with the support of the

teachers - to resolve their everyday problems and to make good use of their leisure.

310. The project "Learn with me" consists in the development of learning materials to support itinerant pupils: these materials are intended for distribution to schools in the first cycle of primary education, preparing in particular for the learning of reading and writing and taking account of the itinerant situation of Gypsy children.

311. In the framework of this project, now targeting the second and third cycles of primary education, a new method is being launched with the creation of a "mother school" (where pupils stay longest and where they are initially enrolled), which takes responsibility for the pupils' school career, develops contacts with itinerant families, prepares support materials and maintains close contacts with the teachers at the schools through which the pupils pass. This project is also concerned with the beginning of distance learning, the subjects taught by the Palmela 3 + 5 school being in the process of experimentation.

312. With regard to the training of teachers, two activities are under way:

(a) The training of teachers in Gypsy history and culture with the support of the Gypsy mediators and specialists in these subjects;

(b) The training of heads of schools with the highest percentages of Gypsy pupils, in partnership with Italy and Greece and with the support of the European Community.

313. With regard to recurrent education, families are encouraged as necessary to help the young with reading, writing and counting and with their attendance at primary school, which is compulsory.

C. Cooperation with the Portuguese-speaking countries of Africa

314. In regard to cooperation with the Portuguese-speaking countries of Africa, mention must be made of order 592-B/89, of 29 July, which establishes the regime for access to public higher education in Portugal by students originating from those countries. Students who have not finished their secondary school are permitted to enrol in a 12th year course, corresponding to the curriculum they have followed in their countries of origin and to the entry requirements for the higher education course they wish to follow in Portugal.

315. To ensure that the students are fully integrated, they are given social and logistic support involving, in particular, access to university halls of residence and restaurants, as well as complementary learning support covering the disciplines in secondary education in which they have had learning difficulties, and which are required for admission to higher education. This support also aims to eliminate any difficulties with learning the Portuguese language that the students may have.

316. In the framework of education in general, without it being specifically composed of measures aimed at the ethnic minorities, a project is being developed for the teaching of Portuguese as a second language, which, being supported by the Commission of the European Community, is intended to train

teachers working with the children of returning emigrants, immigrant pupils from the countries of Africa and other foreign residents.

D. Specific programmes in the field of education, culture and information

317. In the field of activity by the State and in the framework of the educational system, the Secretariat for the Coordination of Multicultural Education Programmes, created by regulatory order 63/91, of 13 March 1991, is responsible for coordinating and stimulating, in the framework of the educational system, programmes and actions designed to promote the values of conviviality, tolerance, dialogue and solidarity between different peoples, ethnic groups and cultures.

318. To this end, it plans, launches and follows through programmes which provide, inter alia, for:

(a) Linkage and communication between the different projects under way in the Ministry of Education that deal with cultural themes, in particular projects with Timorese, Cape Verdean and Gypsy children and with the children of Portuguese citizens residing in other countries;

(b) Promotion in schools of a campaign relating to the Convention on the Rights of the Child;

(c) Linkage with the Institute for Educational Innovation with the objective of developing, in the framework of personal and social education, activities of multicultural education and ethnic conviviality;

(d) The undertaking, with leaders of religious denominations who have classes of moral and religious education in schools, of studies to include elements of cultural and ethnic conviviality in their curricula;

(e) Promotion of a campaign of intercultural dialogue and appreciation of ethnic diversity in schools, in collaboration with associations of parents and students and local communities;

(f) Encouragement of community "civic literacy" actions in the framework of multicultural conviviality, especially in the urban suburbs, with the support of the General Directorate of Educational Extension of the Ministry of Education;

(g) Promotion of school competitions on human rights and the values of solidarity and respect for difference;

(h) Further work on the surveys of the Commission on the Promotion of Human Rights and Equality in Education on ethnic, linguistic and cultural diversity in the Portuguese educational system;

(i) The conducting of a national survey on the values of Portuguese school children in the fields of tolerance and multiracial and pluricultural conviviality;

(j) The conduct, by the specialized services, of studies to identify and analyse the areas and schools at risk for conflicts or racial violence, and the adoption of appropriate measures.

319. The Secretariat for the Coordination of Multicultural Education Programmes has prepared a considerable volume of documents to support the work - both in the field and in research - of multicultural education. It has in particular established a data bank "Inter-cultures" which covers the whole territory of Portugal and the different ethnic groups - Lusitanians, Africans, Orientals, Gypsies, etc. The results of this research exist for the years 1992-1993, 1993-1994 and 1994-1995.

1. First cycle of primary education

320. Analysis of ethnic and cultural groups for 1994-1995 shows that in continental Portugal, there were 37 695 pupils from different ethnic minorities in the first cycle of primary education; children of Portuguese emigrants returning to the country were the largest group, with 11 347 pupils enrolled in schools of the first cycle, while the culture of Macao had the smallest number.

321. In the districts of Portugal, children of returning Portuguese emigrants formed the majority in almost all districts, with the exception of Bragança and Portalegre where Gypsy children were in the majority, and Faro, Lisbon and Setubal, where the culture of Cape Verde was predominant. In the municipalities, Amadora had 1 268 pupils from Cape Verde, followed by Lisbon with 807 pupils from Cape Verde, Loures, 727, and Oeiras, 859. This situation was similar for the culture of Angola, with a total of 1 162 pupils.

322. The educational success rate is highest among Brazilians (93.94%) and lowest among Gypsies (47.94%). In several districts, the success rate of most of the ethnic and cultural groups is 100%, the Gypsies and the children of returning Portuguese emigrants being excluded from this result.

323. In regard to dropout and repetition in the first cycle, 3.53% of children from Cape Verde were repeaters; 4.39% of persons originating from São Tome dropped out; 2.50% of Angolans dropped out; 5.02% of Mozambicans dropped out; 5.35% of Indians were repeaters; 4.35% of persons originating from Macao were repeaters; 8.65% of Timorese were repeaters; 2.64% of Gypsies were repeaters; and 4.52% of pupils from the European Community were repeaters. This means essentially that the number of pupils belonging to oriental cultures increased and the number of children of former Portuguese emigrants diminished over the year.

2. Second cycle of primary education

324. A total of 17 612 pupils were enrolled in the second cycle of primary education, and if a distinction is made between direct attendance and distance learning, 16 768 were in direct attendance. The largest group was that of the children of former Portuguese emigrants, with 6 106 pupils in direct attendance and 607 in distance learning, and the smallest group was that of Macao with only 24 pupils in direct attendance.

325. In the districts, in the most representative mode, the children of former emigrants took first place in all the districts, except Lisbon and Setubal where

children from Cape Verde came first. The oriental cultures showed the opposite trend, only being represented in the districts of Faro and Lisbon.

326. In the municipalities, still in terms of direct attendance, those with the largest groups were Amadora, with 475 pupils from Cape Verde, and Oeiras with 406 pupils also from Cape Verde. In distance learning, the group of 607 children of former Portuguese emigrants formed the majority in all districts, with the greatest concentration in Braga, with 123 pupils. While other cultures did not have very large numbers, mention may nevertheless be made of the European Union with 77 pupils and the Angolans with 53 pupils.

327. In direct attendance, the best rates of success were achieved by the groups from Mozambique, Timor, Macao, India, children of former emigrants, Brazil and the European Union, each with rates of success of more than 90%.

328. Dropout and repetition are very common among these pupils. 0.04% of Cape Verdeans dropped out; 2.65% of Guineans were repeaters; 12.04% of children from São Tome were repeaters; 4.68% of Angolans were repeaters; 4.92% of Mozambicans dropped out; 14.29% of Timorese were repeaters; 26.09% of children from Macao were repeaters; 13.13% of Indians were repeaters; 1.02% of Gypsies were repeaters; 10.1% of children of Portuguese emigrants were repeaters; 0.79% of Brazilians dropped out; 2.03% of children from the European Union were repeaters.

329. It should be mentioned that large numbers of pupils originating from São Tome, Timor and Macao joined the second cycle, while many children of former emigrants dropped out.

3. Third cycle of primary education

330. The third cycle of primary education was attended by 23 411 pupils from ethnic and cultural minorities, including the children of returning Portuguese emigrants who had 10 261 pupils enrolled. Angolans and Cape Verdeans came next, with 3034 and 2025 pupils respectively.

331. With regard to representation in the districts, the group of former emigrants was predominant, except in Lisbon where the culture of Cape Verde had a total of 1 434 pupils. In the municipalities, Amadora had 453 Cape Verdeans enrolled.

332. The rate of school success varies among the groups. For Cape Verde, it was 78.68%; for Guinea Bissau, 86.06%; for São Tome, 86.65%; for Angola, 85.25%; for Mozambique, 87.68%; for India, 84.19%; for Macao, 91.67%; for Timor, 84.04%; for the Gypsies, 77.78%; for the children of former emigrants, 89.93%; for the Brazilians, 91.15% and for the European Union, 88%.

333. For dropout and repetition, the figures were as follows: 5.17% of Cape Verdeans dropped out; 0.48% of children originating from Guinea Bissau dropped out, 2.56% of children from São Tome were repeaters; 3.36% of children from Angola dropped out; 5.33% of children from Mozambique dropped out; 18.85% of children from Timor were repeaters; 3.64% of Gypsies were repeaters; 8.51% of children of former emigrants dropped out; 8.97% of Brazilians dropped out; 13.50% of children from the European Union dropped out.

334. In the third cycle, the number of pupils belonging to oriental cultures increased, while the number of children of former emigrants, Brazilians and citizens of the European Union decreased significantly.

4. Secondary education

335. Secondary education received 11 256 pupils from different ethnic groups. The children of former Portuguese emigrants were the most numerous, with 4 961 enrolments. The culture of Angola was represented by 1 697 enrolments and the culture of Mozambique by 947 pupils.

336. In most of the districts, the children of former emigrants were the largest group, with the exception of Lisbon, with 348 children from Angola and 241 children from Mozambique enrolled; Portalegre, where the group from the European Union was the largest, with 73 enrolled; and Setubal, where there were 413 pupils from Angola. It was in the district of Braga that there were the most children of former emigrants (643) enrolled, followed by Porto (561) and Aveiro (480). The municipality most sought after by this group was Guimarães, with 217 pupils, followed by Castelo de Paiva with 194. In Lisbon, the culture of Angola was represented by 113 pupils.

337. For all the cultural groups together, the rate of success for continental Portugal was 77.64% in the tenth year, 89.81% in the eleventh year and 73.72% in the twelfth year. In regard to the districts, Portalegre (65.38% in the tenth year), Evora (78.26% in the eleventh year) and Vila Real (57.14% in the twelfth year) had the poorest results. The following districts were among the best: Evora, in the tenth year, had a success rate of 94.44%; Setubal, in the eleventh year, 94.92%; and Evora, in the twelfth year, a success rate of 89.66%.

338. Dropout: in the tenth year: 7.33%; in the eleventh year, 5.57%; and finally, in the twelfth year, only 5.17%.

339. Mobility between schools: in the districts, Bragança attracted the most pupils in tenth year, with 15.33% of entries; Aveiro attracted the most pupils in the eleventh year, with 4.03% of entries; and Bragança attracted the most pupils in the twelfth year with 36.17%. The rates for departures were as follows for three districts: Beja, tenth year, 24.24% of departures; Bragança, eleventh year, 20.35% of departures; and Vila Real, twelfth year, 46.15% of departures.

340. The Secretariat for the Coordination of Multicultural Education Programmes regularly produces publications on the multicultural approach to education. It has prepared the Teacher's Guide on multicultural education (see para. 302) and it disseminates various important materials in the framework of multicultural education.

Conclusion

341. Although Portugal is a country whose past is largely responsible for its present multicultural component, it is now beginning to face flows of immigration that are being more strongly felt.

342. Among the groups that may be the object of racial discrimination, there are traditional ethnic groups such as the Gypsies and foreigners from the

Portuguese-speaking countries, but there are also new groups, such as asylum seekers, although these are not very numerous.

343. Compared with other European countries, Portugal experiences relatively few phenomena of discrimination and xenophobia. But the movements of intolerance it has experienced are nevertheless sufficiently serious to merit sustained attention.

344. It would seem, however, that Portugal has tried, both in its legislation and in practice, to find adequate means to face up to phenomena of racial discrimination, racism and xenophobia. Legislation has been described here, and practice is illustrated by jurisprudence which, in spite of certain hesitations, already constitutes a judicial tradition that combats racism and intolerance.

345. Portugal is also not unaware of the economic difficulties that affect the ethnic minorities and foreigners in particular. It is therefore working actively to promote improvement in the living conditions of the populations who are marginalized by their ethnic situation, to bring about the social solidarity that is the basis for any democratic human society.

346. Although there is probably still a long road ahead, the actions carried out in the last few years bear witness to Portugal's deep desire to guarantee a life of dignity to all who, for one reason or another, live on its territory and are therefore subject to the same laws and benefit from the same programmes to gradually improve the quality of life for all.

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